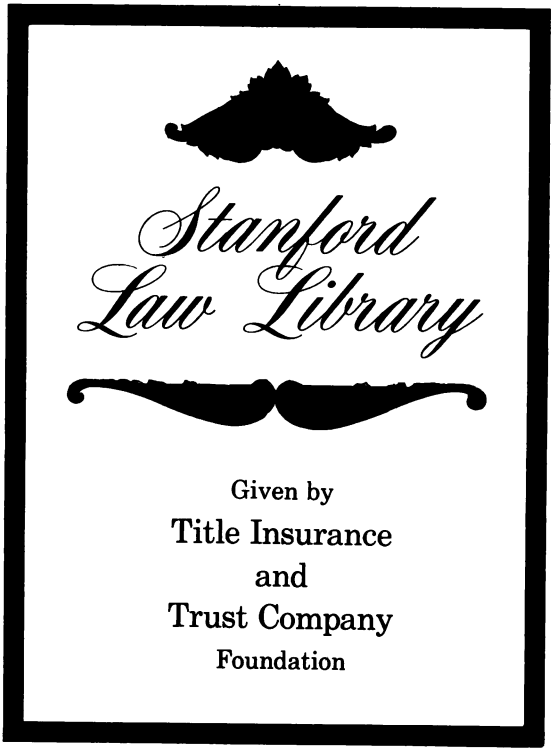
SOLICITORS' FINAL (PASS & HONOURS) & INTERMEDIATE

AND

BAR FINAL EXAMINATIONS.



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A fo for the
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advisable pecially
desirous of taking Honours.

A three months' course of reading is recommended for the Bar Final and for the Solicitors' Intermediate.

Full particulars can be obtained, either personally or by letter, from Mr. INDERMAUR or Mr. THWAITES, at

22, CHANCERY LANE, LONDON.

THE

STUDENT'S GUIDE

TO THE LAW OF

REAL & PERSONAL PROPERTY.

BY

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First Prizeman, Michaelmas, 1872;

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THIRD EDITION.

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ADVERTISEMENT TO THIRD EDITION.

THE Second Edition of this Guide was published in March, 1889, and has now been out of print for some time. The Authors have therefore prepared this Edition, in which the whole matter has been thoroughly reconsidered and revised, and a selection of Questions and Answers at past examinations given down to, and including, the last Bar Final. Many former Questions and Answers have been eliminated, and every endeavour has been made to avoid repetition and keep the work within a reasonable compass. The work forms the Fourth of the series of Guides to the Bar Final, the first being on Trusts and Partnership, by Mr. Indermaur, a Second Edition of which has been published; the second on Criminal Law by Mr. Thwaites, of which a Third Edition has been published; the third on Common Law and Practice by Mr. Indermaur, of which a Second Edition has been published; and the fifth on Specific Performance and Mortgages, by Mr. Indermaur and Mr. Thwaites.

May, 1893.

CONTENTS.

THE STUDENT'S GUIDE

TO THE LAW OF

REAL & PERSONAL PROPERTY.

I.—THE COURSE OF READING.

THE design of this Guide is to assist law students in general, and in particular those reading for the Bar Final Examination. We propose to give our readers general advice and assistance by suggesting what they should read, furnishing them with certain material to read, giving a set of test questions, and finally concluding with a digest of questions and answers framed from the actual questions hitherto asked at the Bar Final.

The Council of Legal Education have now prescribed a course of study for the Bar Final which they estimate will cover a period of two years. The following is a condensed copy of the prospectus issued in 1892:—

Regulations.

1. Candidates for the Pass Examination will be examined at their option in *any three* of the following subjects, in addition to Roman Law—

I. Elements of the Law of Real and Personal Property.
II. Elements of the Law of Contracts and Torts.
III. Principles of Equity, Trusts, and Easements.
IV. Procedure and Evidence.
V. Constitutional Law and Legal History.

Such Candidates will *also* be examined in *one* of the following group of subjects, A, B, C, such group to be selected by the Candidate—

A { Purchases and Leases. / Mortgages. / Settlements and Wills.

B { Negotiable Instruments. / Agency in Mercantile Contracts. / Contracts of Sale of Goods.

C { Administration of Assets on Death.
Specific Performance.
Partnership and Winding-up of Companies.

2. Candidates for Honours will be examined in all the above subjects.

3. Up to January, 1894, both for Pass and Honours Examinations the above subjects will be examined upon so far only as treated in the lectures and classes since January, 1892; and after January, 1894, so far only as treated in the lectures and classes during the two years preceding each Examination.

The Honours Examinations in connection with the Bar Final are now held twice in each year. They are open to students who are under 25 years of years. At each such examination one studentship of £105 yearly for three years is awarded and certificates of honour are also awarded, and a pass certificate entitling to call to the bar without further examination may be awarded to any candidates who do not get honours. We understand that a student who has passed the Bar Final can subsequently sit for the Honours Examination before he is called.

The student who desires to attain a thorough knowledge rather than to merely satisfy the very reasonable demands of the examiners will find the following a good course of reading:—

1. Read Williams' Real Property.
2. Read Williams' Personal Property.
3. Read Goodeve's Modern Law of Real Property.
4. Read Goodeve's Law of Personal Property.
5. Make a separate reading of the Conveyancing and Settled Land Acts.
6. Read Smith's Compendium of the Law of Real and Personal Property.
7. Read Tudor's Leading Cases on Conveyancing.
8. Read the portions of Elphinstone's Introduction to Conveyancing and of the dissertations in Prideaux's Conveyancing, referring to some of the Precedents.
9. Specially analyze and consider the Statutes, of which a list is given in this work (*post*, page 45).

We think that the works might well be read in the order above detailed; but certainly, to conclude, Williams' Real Property and Williams' Personal Property, or Goodeve's Real Property and Goodeve's Personal Property should be read again.

With regard to Tudor's Conveyancing Cases, if the student should not be able to read the whole work, we give a list of the most important cases, and would remark that the notes to these cases are even more important than the cases themselves:—

Alexander v. Alexander.
Bowles' (Lewis) Case.
Braybroke (Lord) v. Inskip.
Cadell v. Palmer.
Corbyn v. French.
Elliott v. Davenport.
Fox v. Bishop of Chester.
Gardner v. Sheldon.
Griffiths v. Vere.
Hanson v. Graham.
Morley v. Bird.
Pawlett v. Pawlett.
Richardson v. Langridge.
Shelley's Case.
Stapleton v. Cheales.
Sury v. Pigot.
Tyrringham's Case.
Viner v. Francis.
Wild's Case.

The really industrious student will read these cases and notes from "Tudor," but in doing so, he will find it an advantage to have by him "Indermaur's Epitome of Leading Conveyancing and Equity Cases," which contains all the above; and, having read the particular cases and notes in the large volume, he can then turn to the Epitome and read that, and. very likely, may be able to add to the notes there. In

default of reading the large work, a perusal of the cases and notes in the Epitome will be of service.

With regard to the Conveyancing and Settled Land Acts the student should read any good edition, say Wolstenholme and Turner, or Hood and Challis. If time permit, he will find the notes following the various sections of great service. Some of the sections are long and complicated, and an Epitome of the Acts will manifestly be of service. We have therefore given such an Epitome (see *post*, page 6), and this should be studied in conjunction with the Acts; the condensation of the sections will tend to impress their provisions on the student. Some students may perhaps only find time to go through the Epitome, though here and there they will find it necessary to refer to the Acts.

Smith's Compendium is a hard work, and one upon which it will be found very useful to take notes during the reading. The student who does not care to tackle Smith, but wishes to read something besides Williams and Goodeve will find a perusal of Edward's Compendium of the Law of Property in Land repay him well for the time spent on it.

As to taking notes, they are useful in moderation, but great moderation should be observed. It is useless to put down in a note-book a lot of points merely for them to stop there and not be remembered.

With regard to our list of Statutes, a great many of them will be found sufficiently touched upon in the works we have set for the student's reading, but if time permit, it will be found very advisable to also consider them separately, either by reference to the text books, or, in some cases, to the Statutes themselves, and, to save time, an epitome of them will be found extremely useful. We recommend Marcy's Epitome of Conveyancing Statutes; and as to the Conveyancing and Settled Land Acts, we have already dealt with them specially, and given in this work our own Epitomes of them (see *post*, page 6).

Thus, then, we have mapped out for the student what we consider a very thorough course of reading. We wish now to deal with students who have not time, or who are not willing, to go through so much, and to these we would say, omit Smith's Compendium and Tudor's Conveyancing Cases, but do not fail to read the cases given (and the notes) in Indermaur's Epitome of Conveyancing Cases. A separate study of the Statutes, other than the Conveyancing and Settled Land Acts, may no doubt also be omitted. All should, however, strive to commit to memory the references or short titles of the most important of the Statutes.

Finally, we have to deal with those who will not, or cannot, even go through this modified course, meaning to do only what is actually essential. To such we can only say, omit also Williams' Real Property and Williams' Personal Property, and Prideaux, and that will leave for essential study Goodeve's Real Property, Goodeve's Personal Property, Elphinstone's Conveyancing, the Conveyancing and Settled Land Acts, Epitome of Cases, and something in the shape of a consideration of the Statutes. If time is very pressing we may also add that it *may* be sufficient as regards Goodeve's Personal Property to read only Chapters 6, 13, 16 and 20.

All classes of readers should, however, carefully study the Test Questions, and the Digest of Questions and Answers given in this work (see *post*, pages 48 and 59, *et seq*). As to the Test Questions, they should be considered and studied during, or directly after, a perusal of the text books, and it will be excellent practice to write out answers to the Test Questions, or, at any rate, to a number of the more important of them. These Test Questions are mainly founded on Mr. Williams' and Mr. Goodeve's works. The final study with every one, to conclude the course of reading, should be the Digest of Questions and Answers, for by means of those the student's knowledge is focussed and brought as it were to a point.

II.—EPITOME OF THE CONVEYANCING AND SETTLED LAND ACTS.

44 & 45 VICT., C. 41.

Conveyancing and Law of Property Act, 1881.

(*Commencement of Act, 1st January*, 1882.)

Part I.—is Preliminary and gives Definitions.

Part II.—Sales and other Transactions.

Sec. 3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign has no right to call for the title to the leasehold reversion.

(2.) A purchaser of enfranchised copyholds has no right to call for the title to make the enfranchisement.

(3.) A purchaser not to require any abstract or copy or production of any instrument affecting title prior to time prescribed (by law or agreement) for commencement of the title, even although the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to purchaser; and no prior enquiry to be allowed; and recitals in abstracted documents as to prior title to be presumed correct unless contrary appears.

(4.) Where land sold is held by lease (not including underlease), purchaser shall assume, unless the contrary appears, that the lease was duly granted; and on production of receipt for the last payment due for rent, shall assume, unless the contrary appears, that the rent and all covenants have been duly paid and performed up to completion.

(5.) Where land sold is held by underlease, the purchaser shall assume, unless the contrary appears, that the underlease and every superior lease were duly granted; and on production of receipt for the last payment due for rent,

shall assume, unless the contrary appears, that the rent and covenants have been duly paid and performed up to completion of the purchase, and further that all rent due under every superior lease, and all covenants therein have been duly paid and performed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all documents *not in the vendor's possession*, and the expenses of all journeys incidental to such production or inspection, and all other expenses relating thereto, and all attested, stamped, office or other copies thereof, shall be borne by the purchaser; and where the vendor retains possession of any document, the expenses of making any copy which a purchaser requires shall be borne by such purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(10.) This section applies only to sales made after 1881.

Sec. 4.—Where any person dies after 1881, leaving a contract enforceable against his heir (or devisee) for the sale of the fee simple or other freehold interest descendible to his heirs general, his personal representatives shall have power to convey the same.

Sec. 5.—Where land subject to any incumbrance is sold, the Court may, on application of any party to the sale, allow payment into Court of a sum sufficient to meet such incumbrance, and any costs and interest (not usually exceeding one-tenth of original amount paid in), and thereupon Court may declare land to be freed from such incumbrance. The Court has power afterwards, on notice to persons interested in the fund paid in, to direct transfer thereof.

Sec. 6.—In conveyances made after 1881, the ordinary "general words" formerly inserted after the parcels are deemed to be included.

not tithe rent charge, or rent reserved on a sale or lease, or rent payable under a grant or licence for building purposes —can be redeemed by the landowner. He must obtain a certificate from the Land Department of the Board of Agriculture of the amount to be paid for redemption; and then, after one month's notice to the person entitled to the rent, pay or tender the amount certified; and the Department then give a conclusive certificate that rent is redeemed.

Part XI.—Powers of Attorney.

Sec. 46.—Person executing a deed under a power of attorney may execute either in his own name, or in the name of the donor of the power.

Sec. 47.—Attorney not to be liable for any payment made, or other act done by him, *bonâ fide*, under a power without notice of donor's death, lunacy, bankruptcy, or revocation. But this does not affect any right against the person to whom money has been paid.

Sec. 48.—Powers of attorney, on their execution being verified, may be deposited in the Central Office of Supreme Court of Judicature; and an office copy thereof is sufficient evidence of the contents of the instrument and its deposit there. (Rules of Court may be made for carrying out this section.)

Part XII.—Construction and Effect of Deeds, &c.

Sec. 49.—In conveyances, either before or after 1881, the word "Grant" is not necessary to convey any tenements or hereditaments.

Sec. 50.—After 1881, freehold land, or a chose in action may be conveyed by one person direct to himself and another; or by a husband to wife, or wife to husband, either alone or jointly with others.

Sec. 51.—After 1881, to pass a fee simple, the words "in fee simple" to be sufficient without word "heirs;" and to

create an estate tail, the words "in tail" to be sufficient without the words "heirs of the body;" and to create an estate in tail male or female, the words "in tail male," or "in tail female," to be sufficient.

Sec. 52.—Any person entitled to a power, whether coupled with an interest or not, may, by deed, release or contract not to exercise it. (See also sec. 6 of 1882 Act, *post*, page 24.)

Sec. 53.—A deed expressed to be supplemental to another shall be read and have effect as if endorsed thereon, or as if it contained a full recital thereof.

Secs. 54, 55.—In deeds executed after 1881, receipt for consideration in the body of deed is sufficient without a receipt endorsed; and any receipt, whether in body or endorsed, shall be sufficient evidence of payment to satisfy any subsequent purchaser not having actual notice of non-payment.

Sec. 56.—A solicitor in completing a purchase, &c., need not produce an authority from his client to receive the money, but his production of the deed duly executed, with receipt thereon, shall be sufficient authority for payment to him.*

Sec. 57.—Deeds in the form in Schedule 4, or in like form, or using like expressions, shall be sufficient.

Sec. 58.—Covenants made after 1881—(*a*) relating to lands of inheritance, shall be deemed to be made with the covenantee, his heirs and assigns, and (*b*) relating to other lands, shall be deemed to be made with the covenantee, his executors, administrators, and assigns.

Sec. 59.—A covenant and a contract under seal made after 1881 (including a covenant implied under Act) shall, unless otherwise stated, bind the heirs and real estate (without naming them) as well as the personal representatives and personal estate of the covenantor.

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* This is extended to cases where the vendors are trustees, by sec. 2 of the Trustee Act 1888, as from 1st January, 1889.

Sec. 60.—A covenant made after 1881 with two or more jointly shall (unless otherwise stated) enure for the benefit of the survivor or survivors, and any other person on whom the right to sue devolves.

Sec. 61.—In a mortgage, transfer of mortgage, &c., made after 1881, and subject to any contrary intention expressed in the instrument, when money is expressed to be advanced on joint account, or when the instrument is made to more persons than one jointly and not in shares, the money shall be deemed to belong to the mortgagees or transferees, &c., on a joint account as between them and the mortgagor or obligor; and the receipt of the survivors or survivor or personal representative of the last survivor shall be a complete discharge, notwithstanding any notice to the payer of a severance of the joint account.

Sec. 62.—Where, after 1881, freeholds are conveyed to the use that any person shall have an easement thereout, it shall operate to vest such easement in that person.

Sec. 63.—In conveyances made after 1881, and subject to any contrary intention, "all the estate" clause is deemed to be included.

Sec. 64.—In construing any covenant or proviso implied under this Act, words importing singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as case may require.

Part XIII.—Long Term.

Sec. 65.—Where a residue unexpired of not less than 200 years of a term, which, as originally created, was for not less than 300 years, is subsisting in land without any trust or right of redemption, and without there being (either originally, or by release, or other means) any rent, or with merely a peppercorn rent or other rent having no money

value, incident to the reversion, then the term may be enlarged into a fee simple (to be subject, however, to the same trusts, powers, &c., as the term) by the execution of a deed containing a declaration to that effect by *(a)* Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use (whether with restraint on anticipation or not) and then without his concurrence; *(b)* Any person being in receipt of income as trustee in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not; or *(c)* Any person in whom, as personal representative of a deceased person, the term is vested, whether subject to any incumbrance or not. (See sec. 11 of 1882 Act, *post*, page 26.)

Part XIV.—Adoption of Act.

Sec. 66.—All persons, whether solicitors, trustees, or the parties concerned themselves, adopting the provisions of the Act to be protected in doing so.

Part XV.—Miscellaneous.

Sec. 67.—All notices required by this Act must be in writing, and may be served by being left at a person's last known place of abode or business; or, if to be served on a lessee or mortgagee, by being left for him on the land or at any house or building comprised in the lease or mortgage, or in case of a mining lease by being left at office or counting-house of the mine; or by sending through the post a registered letter, directed to the party by name at aforesaid place of abode, business, or counting-house, provided letter is not returned through the post undelivered.

Sec. 68.—5 & 6 Wm. IV., c. 62, may be cited by the short title of The Statutory Declarations Act 1835 in any

declaration made under or by virtue of that Act, or in any other document, or in any Act of Parliament.

Part XVI.—Court, Procedure, Orders.

Sec. 69.—(1.) All matters within the jurisdiction of the Court under this Act shall be assigned to the Chancery Division. (3.) Every application under the Act, except where otherwise expressed, shall be by summons at chambers. (8.) Rules for purposes of Act to be deemed Rules of Court under sec. 17 of Appellate Jurisdiction Act 1876 (39 & 40 Vict., c. 59, sec. 17.)

Sec. 70.—(1.) An order of the Court under any statutory or other jurisdiction, shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or want of any consent, notice, or service.

Part XVII.—Repeals.

Sec. 71.—8 & 9 Vict., c. 119, and 23 & 24 Vict., c. 145, secs. 11 to 30, are repealed; but this is not to affect the validity or invalidity, or any operation, effect, or consequence of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

Part XVIII.—Relates to Ireland.

(The Schedules containing Forms are omitted.)

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45 & 46 Vict., C. 39.

The Conveyancing Act 1882.

(*Commencement of Act, 1st January*, 1883.)

Sec. 1.—*Purchaser* includes a lessee or mortgagee, or an

intending mortgagee, or other person, who for valuable consideration takes or deals for property; and *purchase* has a meaning corresponding with that of purchaser.

Searches.

Sec. 2.—Searches for judgments, deeds, or other documents, whereof entries are allowed or required to be made in the Central Office, may be made by an official; and certificate of result of search shall be conclusive in favour of a purchaser; and a solicitor obtaining an office copy of any such certificate shall not be answerable in respect of any loss that may arise from error in the certificate.

Notice.

Sec. 3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i.) It is within his own knowledge; or would have come to his knowledge, if such inquiries and inspections had been made, as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises—it has come to the knowledge of his counsel, as such; or of his solicitor, or other agent, as such; or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section applies to purchases before or after this Act.

Separate Trustees.

Sec. 5.—On an appointment of new trustees—no matter when the trust was created—a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or if only one trustee was originally appointed,

then one separate trustee may be so appointed for the first-mentioned part. (See sec. 6 of 1892 Act, *post*, page 28.)

Powers.

Sec. 6.—(1.) A person to whom any power (whether coupled with an interest or not) is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power; and on such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power. This section applies to powers created by instruments coming into operation either before or after this Act.

Married Women.

Sec. 7.—(1.) In section 79 of the Fines and Recoveries Act, there shall be substituted for the words, "two of the perpetual commissioners, or two special commissioners," the words, "one of the perpetual commissioners," or "one special commissioner;" and in sec. 83 of the Fines and Recoveries Act there shall be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards execution by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after this Act by a married woman, before a judge of the High Court of Justice in England, or before a judge of a county court in England,

or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor, for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment.

(4.) 3 & 4 William IV., c. 74, sec. 84, from "and the same judge" to the end of the section and sections 85 to 88 inclusive, and 17 & 18 Vict., c. 75, are repealed.

(5.) This section applies only to the execution of deeds by married women after 1882.

Powers of Attorney.

Secs. 8, 9.—(*a*) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, or (*b*) if a power of attorney (whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument—then, in favour of a purchaser, the power shall not be revoked at any time, or during the fixed period as the case may be, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and any act done at any time, or during the fixed time as the case may be, by the donee of the power, in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power,

to the trustees of the settlement for the purposes of the Settled Land Acts.

Sec. 15.—The Court may order capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, although a scheme was not, before execution of the improvement, submitted for approval to the trustees of the settlement or to the Court.

Sec. 16.—If there are, for the time being, no trustees of the settlement for the purposes of the 1882 Act, the following persons shall be such trustees :—

(i.) Any persons for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power of sale; or, if no such person, then

(ii.) Any persons for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not.

Sec. 17.—All the provisions of the Conveyancing Act 1881 as to appointment of new trustees and discharge and retirement of trustees shall apply to trustees for the purposes of the Settled Land Acts, whether appointed by the Court or by the settlement or under provisions contained in the settlement.

Sec. 18.—The provisions of sec. 11 of the Housing of the Working Classes Act 1885, and of any enactment which may be substituted therefor—*i.e.*, *now* sec. 74 of the Housing of the Working Classes Act 1890—shall have effect as if "working classes" included all classes of persons who earn their livelihood by wages or salaries: but this section shall apply only to buildings of a rateable value not exceeding £100 per annum.

III.—LIST OF IMPORTANT STATUTES.

13 Edw. 1, c. 1	De Donis. 1285
18 Edw. 1, c. 1	Quia Emptores. 1290
27 Hen. 8, c. 10	Statute of Uses. 1536
32 Hen. 8, c. 1 1 Vict., c. 26 15 & 16 Vict., c. 24	Wills. 1541, 1837,
13 Eliz., c. 5	Fraudulent Dispositions.
27 Eliz., c. 4	Voluntary Conveyances.
12 Car. 2, c. 24	Abolishing Feudal Tenures.
4 Geo. 2, c. 28 11 Geo. 2, c. 19	Landlord and Tenant.
39 & 40 Geo. 3, c. 98	Thellusson Act.
55 & 56 Vict., c. 58	Accumulations Act 1892.
9 Geo. 4, c. 94	Resignation Bonds.
1 Will. 4, c. 40	Undisposed of Residue.
1 Will. 4, c. 46 37 & 38 Vict., c. 37	Illusory and Exclusive Appointments.
2 & 3 Will. 4, c. 71	Prescription Act.
3 & 4 Will. 4, c. 74	Fines and Recoveries Act.
3 & 4 Will. 4, c. 104 32 & 33 Vict., c. 46	Debts.
3 & 4 Will. 4, c. 105	Dower.
3 & 4 Will. 4, c. 106	Descent.
1 & 2 Vict., c. 110 27 & 28 Vict., c. 112	Judgments.
8 & 9 Vict., c. 106	Real Property Amendment Act, 1845.
8 & 9 Vict., c. 112	Satisfied Terms.
12 & 13 Vict., c. 26 13 & 14 Vict., c. 17	Defects in Leases under Powers.

heirs, in trust for B for life, and then to C and the heirs of his body. During B's life who would be the person to join in the disentailing assurance; and with regard to the parties to so join in barring the entail, what difference, if any, would there have been prior to the 3 & 4 Wm. 4, c. 74?

25. If A, having a remainder in fee after a life estate, grants out of his remainder an estate to B in tail, is there any protectorship here?

26. What is the effect of a grant and devise respectively to A and his heirs male?

27. What difference is there, and why, in the case of either of the following paying off an incumbrance upon the inheritance:—(*a*) A tenant for life. (*b*) A tenant in tail in remainder. (*c*) A tenant in tail in possession?

28. What is an estate in fee simple? How many kinds of fee simple are there? Is it correct to say that the owner of a fee simple estate has an absolute property in it?

29. Explain the object and effect of the statute of *Quia Emptores* (18 Edw. 1, c. 1).

30. What was, and is, the position of an alien with regard to holding property?

31. What is necessary at the present day to constitute a good gift of lands to a charity? Can such a gift ever, and if so, when, be made by will?

32. Give a short history of the past and present law as to judgments affecting land.

33. What circumstances led to the passing of the Statute of Uses? State its chief enactment, and show how its object was frustrated.

34. What is the effect of a grant simply to A without consideration, and why? What difference would it make if it were unto and to the use of A?

35. Grant to A to the use of B in trust for C. Explain the rights and position of each, with reasons.

36. A *cestui que* trust of real and personal property

respectively, dies intestate, and without heirs, or next of kin, to whom does the property go?

37. What were formerly, and what are now, the rights of a husband in the following properties of his wife—(*a*) Her freeholds; (*b*) Her leaseholds; (*c*) Her choses in possession; (*d*) Her choses in action?

38. Define curtesy. What are the essentials to curtesy? What peculiarities are there with regard to it in copyholds and in gavelkind land respectively?

39. Define dower, and show the difference with regard to it if the parties were married prior to or since the 1st January, 1834, both with regard to the right to it and the mode of barring it.

40. Detail and explain the modern method of barring dower when the persons were married prior to 1st January, 1834.

41. Distinguish between (*a*) a reversion and a remainder; and (*b*) a vested and a contingent remainder, giving an instance of each.

42. How is it that although the Common Law rule was different, yet at the present day an assignee of a reversion is able to take advantage of the conditions of re-entry inserted in the original lease?

43. Explain the following:—Attornment, rent service, rent charge, rent seck, quit rent, fee farm rent, rack rent.

44. What was formerly, and what is now, the effect upon an underlease of the merger or surrender of its reversion?

45. Explain the rule in Shelley's Case. Does it have any application to personal property?

46. Give the rules for the creation of contingent remainders. With regard to one of such rules, what was the object of inserting in settlements a limitation to trustees to preserve contingent remainders?

47. With regard to the same rule, what was the effect of 8 & 9 Vict., c. 106, sec. 8, and 40 & 41 Vict., c. 33, respectively?

48. Grant to A for life, and after his decease to the heirs of B. A dies during B's lifetime. What becomes of the estate?

49. Explain and illustrate the doctrine of *cy près*—(*a*) as regards contingent remainders, (*b*) as regards charitable bequests.

50. Define an executory interest. In what two ways may an executory interest arise? Why is it that it can only arise in a deed by means of the Statute of Uses?

51. Distinguish between a shifting and a springing use respectively, giving an instance of each.

52. Within what time must an executory interest arise? What is the leading case on the subject?

53. Give the provisions of the Thellusson Act (39 & 40 Geo. 3, c. 98), limiting the period for accumulation of income. State particularly the exceptions in the Act.

54. What is the effect of a direction to accumulate income exceeding the period allowed by the Thellusson Act? Refer to the leading case on the point.

55. Define a power of appointment, showing how it operates, and explaining why it properly comes under the denomination of an executory interest.

56. Does an appointee, taking under a power, take simply from the person *exercising* the power, or from the person *creating* the power? Explain your answer by illustrations.

57. What difference is there as regards the rule against perpetuities between a general and a special power respectively?

58. What is the effect under 12 & 13 Vict., c. 26, of a lease made by a limited owner under a power, but not strictly in conformity with the terms of that power? What would have been the position in such a case prior to the Act?

59. A tenant for life mortgages his life interest. Does this mortgage affect the power of leasing conferred on him by the Settled Land Act 1882?

60. Powers may be classified as (1) general and special, (2) appendant, in gross, and collateral. Explain and instance each of these.

61. With regard to powers, explain the effect of 1 Wm. 4, c. 46, and 37 & 38 Vict., c. 37, respectively.

62. Define incorporeal property, and compare the mode of conveying it with the original mode of conveying corporeal property. Why can either property be now conveyed by deed of grant?

63. Define and compare rights of common and easements respectively.

64. What do you understand by a *profit à prendre*? Give an instance. What do you understand by a *profit à prendre* being claimed as a *que estate*?

65. What rights cannot be claimed by custom?

66. Give an instance of an easement arising by necessity.

67. How many kinds of rights of common are there? Explain each kind.

68. With regard to an easement, explain what is meant by the dominant and servient tenements respectively.

69. What are the chief ways in which an easement may be extinguished? What is the one case in which unity of possession will not extinguish an easement?

70. With regard to the length of time of enjoyment that will give a title either to a right of common, or an easement, state the provisions of the Prescription Act (2 & 3 Wm. 4, c. 71). What was the law on this point prior to that Act?

71. What is an advowson? How many kinds of advowsons are there? Distinguish between each.

72. Are advowsons and next presentations respectively, real or personal property?

73. What is the proper length of title to be shown to an advowson?

74. What are tithes? Distinguish between tithes, a tithe

rent charge, and a modus. Explain how it was that tithes came into lay hands.

75. If a person having a right to tithes bought the land out of which the tithes issued and subsequently resold that land, would his right to tithes revive? Does merger occur of a tithe rent charge?

76. What is a Resignation Bond, and when is it valid?

77. Define simony, and refer to the point decided in the case of Fox v. Bishop of Chester. What purchase of a living by a clergyman would be simoniacal, although not so on the part of a layman?

78. On the death of an incumbent explain the rights and liabilities as to dilapidations as between his representatives and the successor to the living.

79. What bearing respectively did the Statute of Frauds (29 Car. 2, c. 3, secs. 1, 2, & 3), and the Real Property Amendment Act 1845 (8 & 9 Vict., c. 106, sec. 3), have upon leases?

80. What is the effect of a parol lease for four years?

81. A, having a lease for seven years, holds over after the expiration of that lease. Explain his position directly the lease expires, and how and why that position becomes altered by the acceptance of rent by the landlord.

82. What is the effect of a yearly tenant not quitting in pursuance of notice (*a*) when the notice is given by the landlord, and (*b*) when the notice is given by the tenant?

83. What is the difference between privity of contract and privity of estate? Give an instance of liability in respect of privity of estate.

84. A, having but an interest consisting of a term of seven years in land, professes to make a lease for twenty-one years. In another case, having no interest at all, he professes to make a like lease. In both cases he immediately afterwards becomes possessed of the fee simple. State fully in each case the position and rights of the lessee.

85. State shortly the provision of the Conveyancing Act 1881 with regard to forfeitures of leases for breaches of covenant.

86. State the three most prominent alterations in the law of descent introduced by the Inheritance Act, 3 & 4 Wm. 4, c. 106.

87. How has the first rule of descent been amended by 22 & 23 Vict., c. 35, secs. 19, 20?

88. Explain the rule as to the admission of the half blood, and compare the position of the half blood with regard to realty and personalty respectively.

89. An estate descends to two daughters as co-parceners. One of them dies leaving a son. To whom does her share go, and why?

90. Distinguish on an intestacy between persons taking *per stirpes* and *per capita*, giving an instance of each.

91. A person dies intestate, leaving (*a*) a wife and two children, (*b*) two children and no wife or other relative, and (*c*) a wife and no other relative. In what way in each case will his personal property go?

92. A person dies intestate, leaving a wife, a father, and a brother. How does his personalty go?

93. A person dies intestate, leaving a mother, a brother, and a sister. How does his personalty go?

94. A person dies intestate, leaving a mother, a brother, and two nephews, children of a deceased sister. How does his personalty go?

95. A person dies intestate leaving six nephews, five of them being children of a deceased brother, and one the child of a deceased sister. How does his personalty go?

96. A person dies intestate leaving a nephew and two grand nephews, the children of a deceased nephew. How does his personalty go?

97. A person dies intestate leaving one child of a deceased

son, five children of a deceased daughter, a wife, and a father. How does his personalty go?

98. What do you understand by hotchpot? Illustrate your answer.

99. Give the outline of an ordinary settlement of real estate upon marriage, particularly pointing out how the pin money, jointure, and portions respectively are provided for.

100. Give the outline of an ordinary settlement of personal estate upon a marriage. It is desired to settle personalty upon marriage in the same way as if it were realty, viz., in strict settlement. Can this be done?

101. When, and in what way, and to what extent, can infants make valid marriage settlements?

102. On the death of a trustee under a settlement, in what different ways may a new trustee be appointed? On whom does the trust property now devolve on death of a trustee?

103. What leases may, under the Settled Land Act 1882, be made by the tenant for life? Is any consent or notice necessary prior to leasing?

104. The like question as regards a sale by the tenant for life.

105. How may satisfied terms arise? With regard to them, what is now the provision contained in 8 & 9 Vict., c. 112?

106. Are any special formalities necessary to be observed in either an ante-nuptial or a post-nuptial settlement of furniture?

107. What do you understand by uses in strict settlement?

108. Can a settlement of leaseholds ever be construed as a voluntary settlement so as to be bad in the case of a subsequent sale of the property? Give reasons, pointing out in what respects a settlement of such property is different from a settlement of freeholds.

109. Give a short history of the chief different instruments which have from time to time been used to convey lands *inter vivos*.

110. What is the proper mode of conveying copyholds on a sale and on a mortgage respectively?

111. What powers are, by the Conveyancing Act 1881, conferred on mortgagees, and when do they respectively arise? Is it safe to rely on this Act, or should express powers be inserted in the mortgage?

112. What are the differences between the position of a lessee and assignee of a lease respectively?

113. Explain an *interesse termini*.

114. On a lease of a house is there any implied contract by the landlord that it is reasonably fit for habitation? Refer to the Housing of the Working Classes Act 1890.

115. What is the title to be shown on an open contract for the sale of a freehold and leasehold estate respectively?

116. What is the title to be shown to lands which have been the subject of an exchange? Distinguish between the cases of the exchange having been made prior to and since 1845.

117. Trace the position with regard to the making of a will of lands from the earliest down to the present time.

118. The like, with regard to a will of personalty.

119. Are the following competent witnesses to a will:—The executor, a creditor of the testator, a legatee under the will, the husband or wife of any legatee, the child of any legatee?

120. State the different ways in which a will may be revoked.

121. A makes a will devising Whiteacre to B, and subsequently contracts to sell Whiteacre, and then dies. What is the position of B?

122. When, under a general devise, did trust and mortgaged estates pass? What do the Conveyancing Act

1881 and the Copyhold Act 1887 now provide on the point?

123. Explain the following: general legacy, specific legacy, demonstrative legacy, ademption, abatement.

124. What is a lapse? What alterations did the Wills Act (1 Vict., c. 26) make in the law of lapse?

125. When does a legacy carry interest?

126. Give two instances of a construction being placed on words in a will different to what would be put on the same words in a deed.

127. Devise to X after the death of Y. Does Y take any, and what, estate, and why?

128. What estate do trustees take under a devise to them without words of limitation? What difference was there before 1 Vict., c. 26?

129. Where a testator by his will has charged his real estate with payment of his debts, but has made no express provision as to who is to have the power of sale to raise the necessary money, in whom is the power of sale vested under the provisions of 22 & 23 Vict., c. 35?

130. Limitation to A, and if he shall die without issue to B. What was the effect of this at Common Law, and how has it been affected by 1 Vict., c. 26, and the Conveyancing Act 1882 respectively?

V.—DIGEST OF QUESTIONS AND ANSWERS ON THE LAW OF REAL AND PERSONAL PROPERTY.

(The Answers, except where other references are given, are composed mainly from Williams' Real Property, Goodeve's Real Property, Williams' Personal Property, and Goodeve's Personal Property, and all due acknowledgment is here made to the Authors and Editors of those works.)

1.—Introductory.

Q. Explain the origin and meaning of the distinction between "real" and "personal" property.

A. After 12 Charles 2, c. 24, lands, tenements, and hereditaments were classified as real property, and goods and chattels as personal property. The expressions originated in the legal remedy for the deprivation of possession. When the possession of land was withheld from its rightful owner, his remedy was by a real action (*actio in rem*) to recover it; but for a wrongful withholding of goods, the remedy was by a personal action (*actio in personam*) against the wrongdoer to recover damages, since the goods might have been destroyed.

Q. In what essential respects do personal property and real property differ from each other in nature, title, and ownership respectively?

A. Personal property is not affected by the feudal rules of tenure which affect real estate; is essentially the subject of absolute ownership; consists of goods and chattels, and includes interests less than freehold in real property; the remedy for its deprivation has always been by personal action for damages against the wrong doer; it is transferred by

delivery, or bill of sale, or will; and on the death of the owner always devolves on his legal personal representative in trust to pay debts and then divide amongst the legatees or next-of-kin; the descent is governed by the law of the owner's domicile, for *mobilia sequuntur personam*. Real property consists of lands, tenements and hereditaments; is practically indestructible, and, therefore, not the subject of absolute ownership, estates only being held in it; is governed by the feudal rules of tenure; the remedy for its deprivation has always been by real action to recover the *res ipsa* (action for the recovery of land); it is transferred by deed or will; on the death of the owner it devolves on his devisee or heir-at-law, subject, however, to debts if the personalty is insufficient; and its descent and alienation are governed by the *lex loci rei sitæ*.

Q. Give the principal exceptions, or apparent exceptions, to the rule that personal property is essentially the subject of absolute ownership and cannot be held for any estate.

A. (*a*) Chattels so closely connected with land that they partake of its nature, pass with it when disposed of, and descend with it to the heir of the deceased owner. These are (1) title deeds; (2) heirlooms, which are strictly chattels that go to the heir by special custom, *e.g.*, crown jewels, coat armour, deed boxes, but popularly (and under the Settled Land Act 1882) are personalty settled to devolve along with real estate in strict settlement; (3) fixtures; (4) chattels vegetable, not being emblements; and (5) animals *feræ naturæ*, unless a special property has been acquired in them. (*b*) At law, a term of years might be given to one person for life and then to another absolutely, but not any other property; in equity, however, all kinds of personalty, except articles *quæ ipso usu consumuntur*, might be given to one for life and then to another; and now under the Judicature Acts, the equity rule prevails.

Q. What are fixtures? Can a tenant remove them?

A. Personal chattels annexed to the freehold. The common law maxim is *Quicquid plantatur solo, solo cedit;* so they were irremovable. But exceptions have always been permitted allowing tenants to remove, during the term, fixtures erected for purposes of trade, ornament, or domestic use. And by 14 & 15 Vict., c. 25, and the Agricultural Holdings Act 1883, the like privilege is accorded to agricultural fixtures on certain conditions being complied with. (See Elwes v. Mawe, and Notes in Indermaur's Common Law Cases, 7th edition, 75.)

Q. (a) *On the death of a tenant in fee simple of a house, who is entitled to the fixtures set up by him in it?* (b) *On the death of the tenant for life of a house who would be entitled to the fixtures set up by him?* (c) *When houses or buildings are let for a term of years, and the tenants set up fixtures for the purposes of trade, or of ornament, or domestic convenience, who is entitled to them on the expiration of the term?* (d) *When fixtures are demised with the buildings in which they are, in whom does the property in the fixtures remain?*

A. (*a*) If he devised the house, all the fixtures go to the devisee, but if he died intestate, the legal personal representative takes the fixtures put up for the purposes of trade, ornament, and domestic convenience. (Williams on Executors, 738-745.) (*b*) The rules as to the right of a tenant for life to fixtures put up by him are not clear, but his executor appears to have the right to all fixtures put up for trade, ornament, or domestic convenience. (*Ibid*, 747-751.) (*c*) The tenant is entitled to the fixtures, but he must remove them before the expiration of his tenancy. There are special rules, however, applicable to agricultural tenants. (See previous answer.) (*d*) The property in the fixtures remains in the landlord.

Q. Explain the following maxims:—(1) *The father to the bough, the son to the plough.* (2) *Mobilia sequuntur personam.*

A. (1) This is a maxim having reference to the tenure of

gavelkind, and signifies that here there was never an escheat on attainder or conviction for murder. (2) This expression means that moveables follow the person and are governed by the law of the domicile of the owner, unlike lands which are governed by the *lex loci rei sitæ.*

Q. Explain fully the following terms: Emblements, Estate pur autre vie, Springing Use.

A. *Emblements* are the fruits of the earth produced by labour and manurance, and brought to perfection within the year, *e.g.*, corn, but not clover. The executors of a tenant for life have a right to them unless the tenancy ends by the act of the tenant for life. *An estate pur autre vie* is a freehold estate held by one man for the life of another. Formerly, if the tenant *pur autre vie* died during the life of the *cestui que vie*, the first person who entered on the lands could hold them as *general occupant* until the *cestui que vie* died; unless, indeed, the grant had been to the tenant and his heirs, or the heirs of his body, in which event the heir took as *special occupant* during the remainder of the life of the *cestui que vie* by virtue of his being named in the grant. But by 1 Vict., c. 26, secs. 3 and 6, the owner of an estate *pur autre vie* may dispose of it by will; and if he does not, and there is no special occupant, the lands go to the legal personal representative of the dead tenant *pur autre vie* as part of his personal estate. *A springing use* is an executory interest arising by deed under the Statute of Uses, *e.g.*, a power of appointment over freehold land.

Q. What is meant by Escheat?

A. *Escheat* is the resulting of freehold estate to the lord of whom it is held, where the tenant dies without disposing of it and without heirs. It is (1) *propter defectum sanguinis —i.e.*, where the tenant dies literally without issue; or (2) *propter delictum tenentis—i.e.*, where the tenant was attainted for treason or convicted for felony, which corrupted his blood and interrupted the succession. This second kind

can only happen now on outlawry in criminal proceedings, 33 & 34 Vict., c. 23. The Intestates Estates Act 1884 extended the law of escheat to incorporeal hereditaments, and to equitable estates in corporeal hereditaments. The Copyhold Act 1887 enacts that escheat of enfranchised copyholds shall be to the lord of the manor if the enfranchisement takes place since 16th September, 1887.

Q. *Explain the following terms:—advowson, chief rent, feoffment, shifting use, enfranchisement.*

A. *An advowson* is the perpetual right of presentation to an ecclesiastical benefice; it is an incorporeal hereditament, and real property; it is presentative, collative, donative, or elective; it is either appendant to a manor, or in gross, *i.e.*, a separate property; and it is either an advowson of a vicarage or a rectory. *A chief rent*, or quit rent, is the small fixed rent paid by the freehold tenants of a manor, by payment of which they are free from all other service in respect of their tenure. *A feoffment* was a conveyance at common law used to convey a freehold estate in possession in corporeal hereditaments; its requisites are competent parties, words of pure donation, ascertained property, proper words of limitation, livery of seisin in deed or in law subsequently perfected by entry during the lives of feoffer and feoffee; and since 8 & 9 Vict., c. 106, a deed, except in conveyances by an infant under the custom of gavelkind. *A shifting use* is an executory interest created under the Statute of Uses, by which the legal seisin of freeholds is moved from one person to another, *e.g.*, the name and arms clause in a will by which lands are given to A., but if within a given time he does not take the testator's name and arms, then to B. *Enfranchisement* is the conversion of copyholds into freeholds; and it is either voluntary by the lord conveying the freehold to the tenant, or compulsory under the Copyhold Acts 1852-1887; if voluntary, the lord loses all his rights, but if compulsory

the lord retains his right of escheat and (unless otherwise expressed) his minerals and rights of sporting.

Q. Explain heir-at-law, customary heir, heir-apparent, heir presumptive.

A. A man's heir-at-law is the person upon whom, on the man's death intestate, his real estates devolve by the rules of law. A customary heir is one who inherits under any special custom, *e.g.*, Borough English. A man cannot have an heir until he is dead, for *nemo est hæres viventis;* neither can he make his heir, for *solus deus hæredem facere potest, non homo;* but he may have an heir-apparent, *i.e.*, some person living who must be the heir if he survive, *e.g.*, an eldest son, or an heir-presumptive, *i.e.*, a person who if the man were to die now would be his heir but is liable to be cut out by the birth of a nearer relative, *e.g.*, a daughter whose claim would be ousted by birth of a son.

Q. State the principal provisions and date of the Statute of Frauds.

A. The statute was passed in 1677 (29 Chas. 2, c. 3) to prevent fraudulent practices, enacts (1) leases and interests of freehold, &c., not put in signed writing shall only have the force of estates at will, except leases not exceeding three years at two-thirds of a rack rent; (2) freehold and leasehold estates must be surrendered by deed or signed writing; (3) no action can be brought against a personal representative on a promise to answer damages out of his own estate, *or* on a guarantee, *or* on an agreement upon consideration of marriage, *or* on any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, *or* on an agreement not to be performed within one year from its making, unless made in writing signed; (4) trusts of land must be evidenced by signed writing, except those created, transferred or extinguished by implication of law; (5) assignments of any trust must be in signed writing; (6) an equitable fee simple shall be assets by descent, but the heir is not

personally liable; (7) writs of execution to bind the debtor's goods from delivery to the sheriff; (8) a contract to sell goods for £10 or more not to be good unless the buyer accepts and receives part of the goods, or gives earnest, or partly pays, or put in writing signed by the party to be charged, or his agent; and (9) husband to take administration to wife's personalty as her next-of-kin.

2.—Tenures, Estates, &c.

Q. *Distinguish between allodial lands and feudal lands. Who were tenants in capite, who lord paramount, who mesne lords?*

A. Allodial lands were enjoyed as free and independent property, held of no one and charged with no service; the owners could dispose of them at pleasure. Feudal lands were lands held of a superior, subject to the performance of services, generally military; instead of being the absolute owner, the holder of the feud had merely the usufruct, and could not even dispose of that at his pleasure. Tenants *in capite* were those who held feudal lands from the sovereign direct. The king was lord paramount, all lands being in theory held of him. Mesne lords were tenants *in capite*, who had granted out all or part of their lands to be held of them in subinfeudation.

Q. *Trace the causes which led to the decline of the feudal system in England, mentioning any special enactments which tended to that result.*

A. The system of subinfeudation, which was an essential element, was found prejudicial to the interests of the chief lords by exposing them to the frequent loss of their escheats, wardships, and marriages. The statute of Quia Emptores (18 Edw. 1, c. 1) was the first great blow struck against the feudal system by abolishing subinfeudation. The nation began more to cultivate the arts of peace, and

in a variety of ways the old feudal system became inconvenient, the services often being commuted for a money payment called scutage. The final blow to the system was given by 12 Car. 2, c. 24, which abolished the old feudal tenures, and converted them into free and common socage.

Q. What was subinfeudation? When, why, and how was it abolished?

A. Subinfeudation was the method by which a feudal owner conveyed those parts of his feud not required by himself, so that the grantee held of him, subject to the performance of services, and by a tenure similar to his own. Subinfeudation of the fee simple was abolished in 1290, by the Statute of Quia Emptores, 18 Edw. 1, c. 1, at the instigation of the barons who perceived that their privileges as superior lords were gradually being encroached upon. The statute enacts that every free man may sell his fee simple at his pleasure, but that the purchaser shall hold of the same chief lord of the fee and subject to the same services and customs as the vendor held.

Q. Describe and distinguish the various kinds of conditional estates.

A. Estates upon condition are those, the existence of which depends on the happening, or not happening, of some uncertain event, whereby the estate may be originally created, or enlarged or finally defeated. They are on condition *implied*—*e.g.*, a grant of an office or franchise, or *expressed*. In the latter case the condition is either precedent—*i.e.*, where unless and until the condition is performed the estate cannot vest; or subsequent—*i.e.*, where the estate vests at once, but is liable to be defeated by the grantor re-entering if the subsequent condition is not performed. There is also a conditional limitation—*i.e.*, an estate so limited that it must determine when the contingency on which it is granted fails—*e.g.*, grant to A and his heirs tenants of Dale. Where an estate is granted with a condition which

is illegal or impossible or repugnant to the nature of the estate—if the condition is precedent, the estate never vests; if subsequent, the grantee gets the estate free from the condition.

Q. Mention the different kinds of estates which may exist in land.

A. Freehold estates and estates less than freehold. The latter of these are estates for years, estates at will, and estates at sufferance. The former are (1) Freeholds of inheritance—viz., estates in fee simple and estates tail; and (2) Freeholds not of inheritance—viz., all life estates; and these may be conventional—*i.e.*, created by the act of the parties, or legal—*i.e.*, arising by operation of law, viz.: curtesy, dower, and estate tail after possibility of issue extinct.

Q. Define, (a) *estate in fee simple,* (b) *in fee tail,* (c) *in base fee,* (d) *after possibility of issue extinct,* (e) *at sufferance, and* (f) *chattels real and personal.*

A. (*a*) An estate to a person and his heirs; (*b*) an estate to a person and the heirs of his body, either general or special, male or female; (*c*) an estate created by the barring of an estate tail by a tenant in tail in remainder without the consent of the protector; (*d*) an estate in special tail when the person from whose body the issue are to come dies without issue; (*e*) the estate of a person who, having come lawfully into possession, holds over after the expiration of his lawful title; (*f*) chattels real and personal are personal property, the first though personal yet being connected with realty, and the latter purely personal.

Q. Enumerate and classify the various kinds of estates for life which may subsist in freehold and copyhold lands.

A. They are either conventional (*i.e.*, created by the act of the party by deed or will), or legal (*i.e.*, created by operation of law). Conventional life estates are either for the holder's own life or *pur autre vie*. Legal life estates are

those in dower, curtesy, and tenancy in tail after possibility of issue extinct.

Q. By what words may an estate for years, for life, in tail, and in fee be created by deed and will respectively?

A. No precise words are needed to create an estate for years, but the words used must indicate that the tenant is to hold for a fixed period of time, *i.e.*, for years, months, weeks, or days. An estate for life is created in a deed by a grant to A for his own life or for the life of another, or by a grant to A simply; but in a will the intention must be expressed that the devisee shall not take more than a life estate, because a devise to A simply will give him all the testator's interest unless a contrary intention is expressed (1 Vict., c. 26, sec. 28). An estate tail is created in a deed by a grant to A and the heirs of his body, or to A in fee tail (Conveyancing Act 1881, sec. 51); but in a will, it may be created by any words of procreation evincing the intention, *e.g.*, to A and his seed, to A and his offspring. To create a fee simple in a deed the words of limitation must be clear and precise, viz.: "to A and his heirs," or by the Conveyancing Act 1881, "to A in fee simple"; but in a will a mere devise "to A" without further words of limitation will pass the fee simple or other the testator's whole interest, unless it clearly appears on the face of the will that such was not the testator's intention. (1 Vict., c. 26, sec. 28.) In a conveyance by deed to a corporation, the words used would be "to the corporation and their successors."

Q. Mention the various cases in which an estate in lands may be made to vest by virtue of a statute or statutory authority.

A. This would happen by virtue of the Statute of Uses in the following cases:—(1) By means of a bargain and sale. (2) By means of a lease and release. (3) By means of a covenant to stand seised to uses. (These three modes of conveying property are, however, now obsolete.) (4) By

means of an appointment under a power. (5) By means of a grant to uses. Also under the Trustee Act 1850, where the Court makes a vesting order; also by declaration in a deed appointing new trustees under the Conveyancing Act 1881; also under sec. 5 of that Act on paying the amount of an incumbrance into Court; also by a tenant for life under the provisions of the Settled Land Act 1882; also by order of the County Court for cost of improvements under the Agricultural Holdings Act 1883; also under the Judicature Act 1884, when the Court nominates a person to execute a conveyance, when one ordered by the Court to do so neglects or refuses; also by award of the Land Commissioners (now the Board of Agriculture) made under the Copyhold Acts, or the General Inclosure Acts, or for redemption of tithe rent charge, or of quit rents, &c.; also under the Land Transfer Act 1875.

3.—Life Estates, Settled Land Acts, &c.

Q. What estate or interests may be created in land with regard to their quantity and quality respectively? What difference is there in the quality of an estate limited to A for life, and of an estate limited to A for 1000 *years if he shall so long live?*

A. The quantity of an estate means the time of its continuance. The quality of an estate has reference to the mode of its enjoyment; from this point of view estates may be (1) legal or equitable; (2) in possession or expectancy; (3) in severalty, in joint tenancy, in tenancy in common, or in coparcenary. In the case put there is no difference in quality; the difference is in quantity, the life estate being freehold and real estate, and the term of years less than freehold and personal property.

Q. Define legal waste and equitable waste.

A. Legal waste is such waste as a Court of Law took cognizance of; but if a life estate were granted without

impeachment for waste, although at law the tenant could commit any kind of waste, a Court of Equity would not allow the tenant to do such unconscionable acts of waste as pulling down or destroying the mansion house or cutting ornamental timber, and so these acts were called equitable waste. Under the Judicature Act the rules of equity prevail.

Q. (a) *What is meant by voluntary waste and by permissive waste?* (b) *Is the estate of a legal tenant for life liable after his death to the remainderman for permissive waste suffered in his lifetime?* (c) *Will the Court interfere at the instance of a remainderman to restrain an equitable tenant for life from suffering permissive waste upon the trust property?*

A. (*a*) Waste is any spoil, injury, or destruction to, or alteration of, the inheritance. Voluntary waste is waste committed by actually pulling down, altering, or injuring the property; permissive waste is allowing the property to deteriorate for want of repairs. (*b*) A tenant for life is liable for all acts of voluntary waste, but not for permissive waste (*Re* Cartwright, Avis v. Newman, 41 Ch. D., 532) unless the instrument creating his estate expressly makes him so (Woodhouse v. Walker, 5 Q. B. Div., 404); and his estate would be answerable or not accordingly. (*c*) Not unless the tenant was expressly bound not to commit such waste (Woodhouse v. Walker, *supra*).

Q. A freeholder, having granted a lease for years at a rent payable quarterly, dies during the last quarter of a year intestate. The rent was three-quarters of a year in arrear at his death, and the fourth quarter's rent has become payable. To what person, or persons, does the whole year's rent belong, and by what person, or persons, must it be received?

A. The three-quarters' arrears of rent, being actually due at the death, belong to the legal personal representative of

the dead landlord, who may sue and distrain for them. The proportion of the fourth quarter's rent up to the death also belongs to them, and the balance belongs to the remainderman, reversioner, heir, or devisee (as the case may be); and the whole quarter's rent may be sued and distrained for by the remainderman, etc., who is personally liable to the representatives in an action by them for the apportionment. (See 33 & 34 Vict., c. 35.)

Q. State briefly the effect of the regulations under which the powers given to the tenant for life under the Settled Land Act 1882 *are to be exercised.*

A. Under the 1882 Act, sec. 45, a month's notice must first be sent by registered post to the trustees and their solicitors, if known; but, under the 1884 Act (sec. 5), this may (as regards a sale, exchange, partition, or lease) be a general notice, and be waived or shortened. Under the 1890 Act (sec. 10) no sale, exchange, or lease of the principal mansion-house can be made without consent of trustees or an order of Court, unless the house is a farmhouse, or the house and park do not exceed 25 acres. Under the 1882 Act (sec. 37), a sale of heirlooms cannot be made without an order of Court. Under secs. 3 and 4, a sale is to be at the best price that can be obtained, either by public auction or private contract, together, or in lots. Under sec. 7, the lease must be at the best rent that can be obtained, to take effect in possession not later than twelve months after its date, and is to contain a covenant for payment of rent, and a condition of re-entry on non-payment within a time not exceeding 30 days. Secs. 8-11 also contain further regulations specially relating to building and mining leases.

Q. State the effect of the general regulations under which a tenant for life may lease settled lands for building and mining purposes.

A. The term may not exceed 99 years for a building lease, and 60 years for a mining lease. The lease must be by

deed; to take effect in possession within 12 months; must reserve the best rent, regard being had to any fine (which by the 1884 Act is capital money) and to any money laid out for the benefit of the settled land and to the circumstances; must contain a covenant to pay rent, and a right of re-entry if the rent is not paid within a time named, not exceeding 30 days; a counterpart must be executed by the lessee and delivered to the tenant for life. The building lease must be made partly in consideration of the erection, or improvement, or repair, of buildings or improvements; a peppercorn rent may be reserved for the first five years; if the land is to be leased in lots, the entire rent may be apportioned, but the rent on each lot must not be less than ten shillings, nor greater than a fifth of the annual value of the land with the buildings. The 1889 Act allows an option to be given to the lessee to buy the fee simple within a time not exceeding ten years at a price named in the building lease. In the mining lease, the rent may be an acreage or a tonnage rent; and a minimum rent may be reserved, with power to make up back-workings or not; and the tenant for life gets three-quarters, or (if impeachable for waste) only a quarter of the rent, the rest being capital. The tenant for life must give one month's notice to the trustees, which (by the Act of 1884) may be a general notice and may be waived or shortened. (Settled Land Act 1882, secs. 6-11, 45.)

Q. By whom are the powers conferred by the Settled Land Acts exercisable when the tenant for life is (a) *an infant,* (b) *a married woman,* (c) *a lunatic* ?

A. (*a*) By the trustees of the settlement, and if there are none then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders (sec. 60). (*b*) Where the married woman is entitled for her separate use, or under any statute for her

separate property, or as a *feme sole*, by the married woman; and where she is entitled in any other way, then by her and her husband together (sec. 61). (*c*) By the committee of his estate, under an order from the Lord Chancellor, obtained on petition by the committee or any person interested in the settled land (sec. 62).

Q. What are the provisions of the Settled Land Act 1882 *with reference to the assignment or release of, or the restriction of the exercise of, the tenant for life's powers? and what is the effect of a conflict between those powers and any other powers given by the settlement?*

A. Sec. 50 provides that the powers do not pass to an assignee but remain exercisable by the tenant for life; though if he has assigned his estate he cannot exercise his powers to the prejudice of the assignee, except that if the assignee has not gone into possession he may still exercise his power of leasing without the assignee's consent, if no fine is taken. By secs. 50, 51 and 52 any contract by the tenant for life not to exercise his powers is void, and any prohibition or forfeiture on exercise of such powers is also void. By sec. 57 a settlement may confer larger or additional powers than those contained in the Act. By sec. 56, in case of conflict between the provisions of the Act and those of the settlement, the provisions of the Act are to prevail.

Q. For what purposes of the Conveyancing Act 1881 *and the Settled Land Act* 1882, *respectively, are trustees of a settlement needed, and who would be trustees for those purposes if none were appointed by the settlement?*

A. Under sec. 42 of the Conveyancing Act 1881, trustees are needed where the beneficial owner of land is an infant, and, if a female, is unmarried, for the purpose of managing the property, and applying the income as directed by that section. Under the Settled Land Act 1882, trustees are needed—(1) to receive notice of the tenant for life's intention to exercise his powers under the Act; (2) to consent to a

sale or lease of the mansion and demesne; (3) to consent to a sale of ripe timber where the tenant for life is impeachable for waste; (4) to approve a scheme for improvements; (5) to receive and pay money; (6) to make investments under the direction of the tenant for life; and (7) to exercise the powers of the life tenant, where such tenant is an infant. Under both Acts, if there are no trustees under the settlement, the Court will appoint trustees, on application by or on behalf of the tenant for life.

Q. What are the provisions of the Settled Land Act 1882 *with reference to the cutting and sale of timber by a tenant for life?*

A. By sec. 35 a tenant for life—who is impeachable for waste with respect to any timber—may cut and sell that timber provided it is ripe and fit for cutting, and he gets the consent of the trustees or an order of Court, but three-fourths of the net proceeds are capital and the balance only income. By sec. 29 the tenant for life may cut and use timber which is not ornamental in order to execute, maintain, or repair any improvements under the Act.

Q. Explain the operation of a conveyance by a tenant for life under the Settled Land Act 1882. *What estates and charges are, and what are not, capable of being over-reached by such conveyance?*

A. It operates by virtue of the Act to pass at once by the deed the estate subject to the settlement in whatever manner is requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge. It can over-reach all the limitations, powers and provisions of the settlement, and all estates, interests and charges subsisting or to arise thereunder; but subject to and except (1) estates, interests, and charges which (*a*) have priority to the settlement, or (*b*) are created for securing money actually raised at the date of the deed, and (2) grants at fee farm rents and grants of easements or commons or other rights

granted for value before the date of the deed. (Sec. 20 of 1882 Act.)

Q. What power is given by the Settled Land Acts for the protection or recovery of settled land?

A. By sec. 36 of the 1882 Act, the Court may approve (1) of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding for protection of settled land; or (2) of any action or proceeding for recovery of such land; and may direct payment of the costs out of the settled property.

* *Q. Thomas Styles, who died in* 1884, *by his will, made in* 1870, *devised his real estate in Kent and Lancashire to his married daughter Mary Smith for her life, for her separate use, without power of anticipation; remainder to her husband John Smith for his life; remainder to the first and other sons of John and Mary Smith successively, according to seniority, in tail male; and he declared that he intentionally omitted from his will any power of sale. Mr. and Mrs. Smith, whose eldest son is an infant, desire to sell a farm, part of the settled land in Kent. Advise them how they should proceed, and by whom a conveyance to a purchaser can be made.*

A. I should advise that the declaration is inoperative (Settled Land Act 1882, sec. 51); and Mrs. Smith as tenant for life can sell and convey the farm alone without her husband (secs. 61–63). The wife should obtain the sanction of the trustees, or an order of Court, if the farm forms part of the lands usually occupied with the mansion-house (sec. 10 of 1890 Act); and in any case sell the property, paying regard to the provisions of the Act as to mode of sale and disposal of the net proceeds, which will be capital. Notice must be given to the trustees of the settlement and their solicitor (unless waived), and, if there are no trustees, the tenant for life can be restrained from selling until two have

* This question and the three subsequent ones, were all asked in one paper, and form a series.

been appointed (sec. 38). But a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of the notice.

Q. By the will referred to in the preceding question, a collection of pictures was settled as heirlooms annexed to the principal mansion on the Kent Estate. How can any of the pictures be sold; to whom must the proceeds be paid; and how may they be applied?

A. Mrs. Smith as present tenant for life under the settlement, can sell the (so-called) heirlooms; but she must obtain an order of Court, on application by summons at chambers. The proceeds of sale are capital money, and must be paid either to the trustees of the settlement or into Court, at the option of the tenant for life; but may not be paid to fewer than two persons as trustees, unless the settlement gives express authority for receipt of capital by one trustee. The proceeds may be applied (1) in the purchase of other chattels, to be settled and held on the same trusts as and devolve like the chattels sold, and (2) in any way in which capital money is directed to be applied by the Settled Land Act 1882. (See secs. 37, 22, 21, 25.)

Q. Mr. and Mrs. Smith believe that coal may be found in part of the settled land in Lancashire, and they wish to spend £1,000 *out of the sale money of the heirlooms, in borings and trial pits to ascertain if coal exists capable of being worked to a profit. Can they do so, and how?*

A. Yes, under sub-sec. 19 of sec. 26 of the Settled Land Act 1882. They should submit a scheme for the execution of the works, showing the proposed expenditure, to the trustees of the settlement or to the Court. If the money is in the hands of trustees, the application for approval may be to them (sec. 26), and they may pay the money over on a certificate of the Land Department of the Board of Agriculture, or a competent engineer or able practical surveyor, or an order of Court. There is an appeal from the decision of the

trustees to the Court (sec. 44); and where the money is in Court the application must be made to the Court (sec. 26). The trustees are not justified in paying the money until the work has been done.

Q. If they discover good coal, who can grant a lease of it to a colliery company; and what must be done with the rent?

A. Mrs. Smith, as tenant for life, may lease for not longer than 60 years (Settled Land Act 1882, secs. 2 (10) and 6); or if the settlement gives power to the trustees to grant mining leases they may do so with the consent of the tenant for life (sec. 56). If Mrs. Smith is tenant for life without impeachment of waste, she is entitled to three-fourths of the rent as rents and profits, and the remaining one-fourth is capital money under the Settled Land Act 1882, and must be set aside and applied accordingly; but if she is liable for waste, then one-fourth comes to her as income and three-fourths go as capital money (sec. 11).

Q. A father devised freehold land to trustees (whom he appointed trustees of the settlement) in fee, upon trust to receive the rents, and thereout pay annuities which at present absorb the entire rents, and to pay any surplus to his son till he shall become bankrupt, or assign or encumber his life estate, or die; with an executory trust for the remaindermen on the happening of any such event. No such event has happened. Who can sell the land and convey the fee simple to the purchaser, and who must be parties to the conveyance?

A. Under secs. 2 and 58 of the Settled Land Act 1882, the son is tenant for life; and can therefore sell (under secs. 3 and 4), and convey the estate to the purchaser (under sec. 20). He must, of course, give notice to the trustees, and it is their duty to bring the matter before the Court if they have reason to think that the sale will not be *bonâ fide* in the interest of all interested. The annuitants would have a *locus standi* on the hearing.

Q. State the general nature of the provisions of the Settled

Land Act 1882, *sec.* 34, *relative to the application of the purchase-money arising from a sale, under the Act, of a lease for years, or of a reversion expectant on such a lease.*

A. This section provides that the trustees or the Court may, notwithstanding anything in the Act, require and cause the same to be laid out, invested, and accumulated in such a manner as in the judgment of the trustees, or the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest or reversion in respect whereof the money was paid, or as near thereto as may be. The object of this section is to prevent a sale, made under the Act, of a limited interest, or an interest not in possession, from operating to the prejudice of any person interested under the settlement, whether tenant for life or remainderman. (Hood and Challis' Conveyancing and Settled Land Acts, notes to sec. 24.)

Q. Trustees having a power of sale over a settled estate with the consent of the life tenant in possession, are asked by him to sell the coal under part of the estate separately from the surface. You are requested to advise them if they can, under any circumstances, comply with his wish.

A. Yes, they may under the Confirmation of Sales Act 1862, obtain leave to do so on applying to the Chancery Division in a summary way (25 & 26 Vict., c. 108). Or the tenant for life may himself, without any leave of the Court, sell under the Settled Land Act 1882 (sec. 17).

Q. State briefly the provisions contained in the Settled Land Acts relating to settlements by way of trust for sale.

A. By sec. 63 of the Settled Land Act 1882, any land which under any instrument, whenever made, is subject to a trust or direction for sale, and for application of the purchase-money or income for the benefit of any person for life or any other limited period, shall be deemed settled land, and the instrument a settlement; and the beneficial owner for the

time being of the income shall be deemed tenant for life, and shall have all the powers given by the Act to a tenant for life; and the persons who are trustees for sale or have power to consent to or approve or control a sale, are trustees for the purpose of the Act. By sec. 56 the consent of the tenant for life was needed to enable the trustees to exercise any powers under the settlement, which embraced any objects which are within the powers given by the Act to the tenant for life. It was decided that the tenant for life's consent to a sale by the trustees was not needed where it was the positive duty of the trustees to sell, but was needed where the trustees had a discretion (Taylor v. Poncia, 25 Ch. D., 646). By sec. 6 of 47 & 48 Vict., c. 18, no consent, which is not required by the settlement, is now necessary to enable the powers given by it to be exercised; and by sec. 7 the powers conferred by sec. 63 are not to be exercised by the tenant for life without the leave of the Court. If the Court makes such an order (and as to when it will do so, *see Re* Harding's Settled Estates, 60 L. J., Ch., 277) then whilst it is in force the powers of the trustees are taken away from them. Such an order should be registered as a *lis pendens*, otherwise a purchaser from the trustees is protected.

Q. Enumerate the limited owners to whom powers of alienation are given by the Settled Land Act 1882.

A. The person for the time being beneficially entitled under a settlement to possession of settled land for his life, sec. 2 (4). Also a tenant in tail; a tenant in fee simple with an executory limitation over; the owner of a base fee; a tenant for years determinable on life, or a tenant *pur autre vie*—not holding merely under a lease at a rent; a tenant for life or years determinable on life, whose estate is liable to cease on any event during the life, or to be defeated by an executory gift over, or is subject to a trust for accumulation; a tenant in tail after possibility of issue extinct; a tenant by curtesy; and a person entitled to income of land under a

trust or direction for any life, or until sale of the land, or until forfeiture of his interest (Sec. 58).

Q. State concisely the purposes to which capital money arising under the Settled Land Acts may be applied.

A. (1) Investment on Government securities *or* other securities on which the trustees are, by the settlement, or by law, authorised to invest, *or* in bonds, mortgages, or debentures, or debenture stock of a railway company in Great Britain or Ireland, incorporated by special statute, and having for ten years previous paid a dividend on its ordinary stock or shares; with power to vary. (2) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled estate, or in land tax, tithe rent charge, crown rents, chief rents or quit rents affecting the settled land. (3) In improvements under the Act. (4) In payment for equality of exchange or partition. (5) In buying the seignory of freeholds or the fee simple of copyholds, or (6) the reversion or freehold in fee of leaseholds—subject to the settlement. (7) In buying any fee simple or copyhold lands or leaseholds having 60 years unexpired, with or without minerals. (8) In buying minerals or mining privileges in fee simple, or for at least 60 years. (9) In payment to any absolute owner. (10) In paying costs. (11) In any other way authorised by the settlement. (Sec. 21; see also secs. 34, 36 and 37.)

Q. Who are trustees for the purposes of the Settled Land Acts?

A. Original trustees may be appointed by the settlor or by the Court, and, if there are no trustees at any time, the Court may appoint trustees. Further, under the Settled Land Act 1890 (sec. 16), if there are, for the time being, no trustees of the settlement for the purposes of the Act, the following persons shall be trustees: (*a*) Any persons for the time being under the settlement trustees with power of sale of other land comprised in the settlement and subject to the

same limitation as to the land to be sold or with power of consent to or approval of the exercise of such a power of sale, or if no such persons then (*b*) any persons for the time being under the settlement trustees with future power of sale or under future trust for sale of the land to be sold or with power to consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not.

4.—Estates Tail.

Q. Explain the meaning of an estate tail. By virtue of what statute is it created? In what cases and how can a tenant in tail create a base fee, and convey an estate in fee simple?

A. An estate tail is an estate given to a man and the heirs of his body; it may be general or special, male or female; and it is created by virtue of the statute *De Donis Conditionalibus*. Where a tenant in tail in remainder bars the entail without the consent of the protector, he creates a base fee—which may subsequently be enlarged into a fee simple by a new disentailing deed executed with the consent of the protector, or after the protector's death, or by merger in the reversion in fee, or by 12 years' possession after the protector's death. A tenant in tail in possession (or one in remainder with the protector's consent) can convey an estate in fee simple by deed, enrolled in the central office within six months. Every tenant in tail can convey a fee simple under the Settled Land Acts, but the entail would attach to the purchase-money.

Q. What were the provisions of the statute "De Donis Conditionalibus"? *State the reasons which led to the enactment, and show how its effects were counteracted.*

A. This statute (13 Edw. 1, c. 1) provided that the will of the donor should be observed *secundum formam in cartâ doni expressam*, and that an estate given to a man and the

heirs of his body, should strictly so descend, notwithstanding any alienation by the donee. The reason for this enactment was that a grant to a man and the heirs of his body was construed as creating a conditional fee, that the donee could alienate absolutely on the birth of issue. Its effects were counteracted by the system that grew up of suffering fines and recoveries, the first instance of one being allowed being found in Taltarum's Case, which was decided about 200 years after the statute.

Q. State shortly the effect of the Fines and Recoveries Act as to barring estates tail.

A. It abolished the methods of barring an estate tail by fine and by common recovery, and substituted a deed executed by the tenant in tail and enrolled in the Central Office of the High Court within six months afterwards. As regards an estate tail in remainder, if the consent of the protector of the settlement is not obtained, a base fee only is acquired.

Q. Show the different effect of a gift to a man and the heirs of his body of freeholds, copyholds and leaseholds.

A. In freeholds, the man takes an estate tail by the statute *De Donis*, which he can bar under 3 & 4 Wm. 4, c. 74. In copyholds—if the custom of the manor allows entails, he takes an estate tail which he can bar under 3 & 4 Wm. 4, c. 74; but if not, he has a fee simple conditional which he cannot alienate until the birth of living issue. In leaseholds, he gets the absolute ownership, because there can be no estates in personalty, and words which give an estate tail in realty give absolute ownership of personalty.

Q. Under a devise of freehold land to two persons and the heirs of their bodies, what estates are created where (a) *such persons can intermarry, and* (b) *where they cannot?*

A. (*a*) An estate in special tail which will descend only to the heirs of their two bodies. As long as A and B live

they share the rents and profits equally; on the death of either the survivor is entitled to the whole for life, and on the death of the survivor the heir of their body (if they have intermarried) will succeed by descent. (*b*) A and B are ordinary joint tenants for life; on the death of one the survivor takes the whole for life, but on the death of the survivor the inheritance is severed, and the heir of the body of A, and the heir of the body B, become tenants in common in tail without further survivorship.

Q. Who is a tenant in tail after possibility of issue extinct? Can he bar the estate tail? Give your reason.

A. He is the owner of an estate in tail special (*i.e.*, to him and the heirs of his body by a particular wife) where the particular wife is dead without issue. He is expressly restricted from barring the entail by 3 & 4 Wm. 4, c. 74, sec. 18. But he has the powers of a tenant for life under the Settled Land Act 1882.

Q. What difference is there in the effect of a limitation to a man and his heirs male when contained in a deed, and when contained in a will? Explain the reason.

A. In a deed, a fee simple will be created, for there are no words of procreation; in a will, however, such words will create an estate in tail male, on account of the guiding rule that the intention shall be observed.

Q. Land was limited to A and his heirs by B, his wife. B having died without issue, can A sell the fee simple?

A. In a deed, this limitation would be construed as passing a fee simple, so that A would always have full power of disposition. In a will, however, the intention of the testator is to be observed, and it would be construed as an estate in special tail, and after B's death without issue, A being tenant in tail after possibility of issue extinct, could not bar the entail if it still subsisted, and therefore could not sell the fee simple —except under the Settled Land Act 1882, under which he is a tenant for life.

Q. What analogy to the office of "protector" of a settlement existed previously to the Fines and Recoveries Act? Show in what respects the establishment of the office was a new departure.

A. Before the Act, it was absolutely necessary that the first tenant for life who had possession of the land should concur in the proceedings, for no recovery could be suffered unless on a feigned action brought against the feudal holder of the possession. Now, the office of protector is established when the estate tail is in remainder, but, although the protector is usually the first tenant for life, not more than three persons may be specially appointed by the settlement. Where a previous life estate does exist, it does not confer the office of protector unless it is created by the same settlement which created the estate tail. (Williams' Real Property, 97, 98.)

Q. A being tenant for life with remainder to B in tail, under one instrument, what power has B over the estate, first, with A's consent; and, secondly, without it?

A. During the continuance of A's life estate, B can only completely bar the entail with his consent as protector. If B does not get A's consent, though B can bar his own issue, he cannot bar the remainders over, and will create what is known as a base fee.

Q. By marriage settlement freehold lands were limited to A for life, remainder to his first and other sons successively in tail male, remainders over; and copyholds were surrendered to trustees, their heirs and assigns, and leaseholds were assigned to trustees, their executors, administrators, and assigns, upon trusts corresponding with the uses of the freeholds. A is dead, and his first son B, having attained majority, wishes to acquire absolute interests in the whole property. How can this be done?

A. As to the freeholds, B must execute a disentailing deed, and enroll it in the Chancery Division within six months after execution; he will thereby acquire the absolute fee

simple in possession. As to the copyholds—(1) if the custom of the manor permits entails, B can bar the equitable entail by surrender or deed enrolled, and so acquire the absolute estate; (2) otherwise, he has an estate analogous to the old fee simple conditional, and can only acquire the absolute ownership by alienation during the life of his issue. As to the leaseholds, he is absolute equitable owner of them, for words which create an estate tail in freehold give the absolute ownership of personalty.

Q. What is a base fee, and how may it be enlarged into a fee simple absolute?

A. A base fee is one to exist only whilst a certain qualification is attached to it, and the term is particularly applied to the estate which a tenant in tail in remainder creates who bars the entail without the consent of the protector. Such an estate may be enlarged into a fee simple absolute (1) by the execution of a new disentailing assurance, with the consent of the protector; (2) by the execution of a new disentailing assurance when the estate tail becomes an estate in possession; (3) by the base fee and the ultimate limitation in fee simple becoming vested in the same person; and (4) by lapse of time under the Statute of Limitations (37 & 38 Vict., c. 57, sec. 6).

Q. What powers of sale and leasing belong to a tenant in tail in possession and a person entitled in possession to a base fee?

A. Under sec. 58 of the Settled Land Act 1882, both of these parties have the powers of a tenant for life under that Act, viz., full power of sale, and a power of leasing, 99 years for a building lease, 60 years for a mining lease, and 21 years for any other lease. Also under the 3 & 4 Wm. 4, c. 74, there is a power of leasing for 21 years. These powers may be exercised without barring the entail.

5.—Devolution on Death.

Q. State the rules of descent of an estate in fee simple

A. The nephew being a bachelor, this is a contingent remainder, and liable to fail by the nephew dying before he has a son of that age. The limitation would be void as an executory interest for exceeding the rule against perpetuities, and 40 & 41 Vict., c. 33, would not here assist. (See Brackenbury v. Gibbons, 2 Ch. D., 417.)

Q. Land is conveyed to A for a term of 20 *years, with remainder, if B shall survive the term, to B in fee. Is the remainder good, or bad, and why?*

A. The limitation to B is a contingent remainder of an estate of freehold; it, therefore, requires a particular estate of freehold to support it, and as there is no such estate, the contingent remainder is void.

Q. (a) *Upon the marriage of A, a bachelor, lands were settled upon him for life, with remainder to his eldest son for life, with remainder to the first son of such eldest son in fee. Which of the above limitations would be valid, and which void, and why?* (b) *Lands were devised to A, a bachelor, for life, with remainder to his eldest son for life, with remainder to the first and other sons of such eldest son successively in tail. What would be the effect of that limitation, and why?*

A. (*a*) The limitations to A for life and to his eldest son for life are good; but the further limitation to the son of the eldest son in fee is void, because it infringes rule 6 (see page 100) for the creation of contingent remainders. (*b*) The limitation to A for life is good, and the remaining limitations are construed by the *cy-près* doctrine as giving an estate tail to A's eldest son. (See further *ante*, page 100.)

Q. Explain the necessity which formerly existed for trusts to preserve contingent remainders.

A. Because in the absence of such trusts, if the particular estate ended by forfeiture, surrender, or merger, before the contingent remainder was ready to vest, such contingent remainder failed, as it had no particular estate to support it. 8 & 9 Vict., c. 106, did away with the necessity for such trusts.

Q. What restriction existed at Common Law with regard to the alienation of contingent remainders? By what statute was this restriction removed?

A. At law, when the person in whom the contingent remainder must vest (if it ever does vest) was once ascertained, he could release it to a person having a vested interest in the land, or could devise it to anybody; but in equity, any conveyance of it for value was enforced. By 8 & 9 Vict., c. 106, a contingent interest is made alienable by deed, whether the object of the limitation of such interest is or is not ascertained; and the Wills Act 1837 makes all contingent interests devisable. (Edwards, 142.)

Q. What is meant by a vested estate subject to being divested?

A. An estate vested in any person, but liable to be overreached and brought to an end by means of an executory limitation, *e.g.*, where lands are given to A and his heirs to such uses as B shall appoint, and in default of and until appointment to the use of C and his heirs, here C has a vested estate in fee simple in possession, of which, however, he may be divested (in all or in part) by B exercising his overriding power of appointment.

Q. Explain the meaning of the following terms:—"Possibility of reverter." "Contingency with a double aspect."

A. *Possibility of reverter* signifies the chance of the lord of the fee getting back the lands granted either by forfeiture or by escheat. A *contingency with a double aspect* is the alternative limitation of two interests, *e.g.*, a limitation to A for life, and, if A leave a son, to that son in fee, but, if A leave no son, to A's daughter in fee; and is valid despite the rule that there can be no remainder limited after a fee simple, for the second contingent remainder is not limited after, but is in substitution for, the former.

Q. A testator bequeathed a legacy to B, to be paid when he attained the age of 21 *years; a legacy to C, payable three years*

after his (the testator's) death; a legacy to D, if he attained 21; *a legacy to E, at the age of* 21; *a legacy to F when he attained* 21, *with a direction that interest at* 5 *per cent. on the last-mentioned legacy should in the meantime be applied for the benefit of F; and, lastly, a legacy to G at the death of the testator's wife; and made his wife residuary legatee. B, D, E, and F respectively died under the age of* 21 *years; C died three months after the testator; and G died in the lifetime of the testator's widow. Which of the legatees took vested interests in their legacies, and which did not?*

A. The legacy to B vested at testator's death, for the time of payment only was postponed, the gift being a present one, and B's next-of-kin will get the legacy. C's legacy also vested and goes to his personal representative for the same reason. The legacies to D and E did not vest, but were given contingently on their respectively attaining 21; both legacies, therefore, pass to the testator's widow as residuary legatee. F's legacy is saved from the fate of those to D and E by the gift of interest until the contingency happens, which makes the legacy a vested one, and consequently it passes to F's legal personal representative in trust for his next-of-kin. G's legacy vested at testator's death, the time of payment only being postponed. (Hanson v. Graham, Indermaur's Conveyancing and Equity Cases, 50.)

Q. A fund was bequeathed to A for life, and after his decease to the children of B in equal shares. B had five children, three born in A's lifetime, and two after A's death: but one of the children born in A's lifetime died an infant before A's death. Who, upon A's death, would be entitled to the fund, and why?

A. The fund is divided equally amongst the three children born in A's lifetime, the deceased child's share passing to his next-of-kin. One of the rules for construing testamentary gifts to children is that where a particular interest is carved out (here, A's life interest), with a gift over to the children

of any person, such gift over embraces all the children who come into existence before the period of distribution (A's death). (See notes to Viner v. Francis in Indermaur's Conveyancing and Equity Cases, 38.)

Q. State the rule in Shelley's case. Do you know the reasons for the rule? Does it apply to wills as well as to deeds?

A. If a person by any conveyance has an estate of freehold, and, by the same conveyance, an estate is limited (mediately or immediately) to his heirs in fee or in tail, the word "heirs" is a word of limitation and not of purchase, *i.e.*, it marks out the estate taken by the person himself and gives nothing directly to the heirs—*e.g.*, limitation to A for life with remainder to the heirs of his body, A takes an estate tail. The reasons for the rule appear to be three—(1) The two limitations virtually accomplished the same purposes as a gift of the inheritance to the ancestor, and therefore the law construed them as such a gift, so as to avoid the injury sustained by the claims of the lord and the specialty creditors of the ancestor being fraudulently evaded; (2) a desire to facilitate alienation, by vesting the inheritance in the ancestor instead of keeping it in abeyance till his death; (3) the carrying out of the primary intention that the ancestor should enjoy the estate for his life and, subject thereto, it should descend to his heirs, by sacrificing the secondary intention that the ancestor should have a life estate only, and that his heirs should take by purchase. (Smith's Compendium, 6th edition, page 181.) The rule is applied to limitations in wills, except where its application would clearly have a result contrary to the intention of the testator as expressed in the will itself.

Q. What difference is there between a limitation to A for life, with remainder to the heirs male of his body, and a limitation to A for life with remainder to his first and other sons successively, and the heirs male of their respective bodies?

A. In the first case A takes an estate tail male under the

rule in Shelley's case; in the second case only a life estate, and his son an estate tail male.

Q. Define a "perpetuity," and state the rules governing the limitations of estates in land in reference to the law of perpetuities.

A. A perpetuity means any limitation of a future estate or interest whereby the vesting of the absolute ownership or of an indefeasible estate in fee simple may be postponed for a longer period than the law permits. As to remainders, the rules are that an estate cannot be limited to the child of an unborn person in remainder after a particular estate limited to its parent, and that a contingent remainder must (unless within the Contingent Remainders Act 1877) vest not later than the ending of the particular estate (see page 100). Executory interests, and equitable contingent remainders, and contingent remainders of copyholds, and future interests in personalty, are governed by the Rule against Perpetuities which makes them void if, at the time when the limitation comes into force, there is a possibility that the estate or interest limited will not vest within the period of a life or lives then in being, and 21 years longer; but this rule does not vitiate (1) limitations following an estate tail, (2) charitable trusts, (3) powers of sale in a settlement of land, (4) a trust to accumulate for payment of debts, and (5) restrictive covenants binding land. (Edwards, 323—329.)

Q. State the rule of law as to perpetuities. A, by his will, gives personal property on trust for his daughter, B, for life, remainder in trust for any man whom she may marry for life, with remainder as to both capital and income, to such of B's children as attain 21. *He makes a similar gift in favour of his daughter, C, and her husband, with remainder, as to both capital and income, to such of C's children as shall be living at the death of the survivor of C and her husband, and attain* 21. *Are any of these gifts void for remoteness?*

A. All executory interests must commence within the

period of any fixed number of existing lives and 21 years afterwards, with a further period for gestation where it actually exists. The rule against perpetuities is reckoned from the date when the instrument comes into operation—here, the death of A. All these gifts are good. In B's case the limitations must vest within 21 years after B's death; and in C's case it is the same, as C is actually married when A dies. (Cadell v. Palmer, and Notes, in Tudor's Real Property Cases.)

Q. Mention the various periods during which accumulations are allowed by the Thellusson Act (39 *&* 40 *Geo.* 3, *c.* 98), *and the cases to which the Act does not apply.*

A. Income may not be accumulated for a longer period than (1) the life of the grantor, settlor, devisor, or testator; or (2) 21 years after his death; or (3) the minority of any person living or *en ventre sa mère* at such death; or (4) the minority of any person who, if living, and of full age, would be entitled to the accumulations. Where a direction for accumulation exceeds those limits, the excess only is void (Griffiths v. Vere, Indermaur's Conveyancing and Equity Cases, 23); unless the period may transgress the rule against perpetuities, when it is void altogether (Cadell v. Palmer, Indermaur's Conveyancing and Equity Cases, 23). Income directed to be accumulated contrary to the Act goes to the person who would have been entitled in the absence of such direction (sec 1). The Act does not apply to provisions (1) for payment of debts; (2) for raising portions for children; and (3) as to the disposal of the produce of timber or wood—and in these three cases the accumulation may be for the full rule against perpetuities. The Accumulations Act 1892, forbids accumulations *for investment in land only* being valid beyond the minority of the next owner.

Q. A testator, who died in 1837, *directed his trustees, out of the income of his real and personal estate, to pay an annuity to his wife during her life, and to accumulate the rest of the*

income during her life, and at her death to pay the accumulations to such of his brothers as should then be living. His wife died in 1870, *and two brothers of the testator were then living. How far, if at all, was the direction valid, and to whom did the surplus income from the death of the testator to that of the wife belong?*

A. The direction is good for twenty-one years after the testator's death, and the accumulations during that period will go to the two brothers living at the wife's death in 1870; but the direction is void after the twenty-one years, and the excess income from 1858 to 1870 goes to the persons entitled in the absence of any such direction, *i.e.*, so far as it comes from realty, to the residuary devisee under the will, or the heir-at-law, as the case may be, and so far as it comes from personalty, to the residuary legatee or next-of-kin. (See last answer.)

Q. What restriction has been placed on executory limitations by the Conveyancing Act 1882, *sec.* 10?

A. That where, under any instrument coming into operation after 1882, any person is entitled to "land" in fee, or for years (absolute or determinable on life), or for life, with an executory limitation over on default or failure of his issue, such executory limitation shall not take effect if any issue capable of inheriting attains twenty-one. (See also next question, and *post*, page 139.)

Q. A testator, who died in 1883, *devised a freehold farm to A in fee simple; but if A should die without leaving issue living at his death, then over to persons who cannot now be ascertained. A, who has adult children, has sold the farm as absolute owner. The purchaser objects that the title is bad, A's estate being defeasible by his death without leaving issue. Is the objection sustainable, and is the date of the testator's death important?*

A. The objection is not sustainable, because the executory limitation over in default of issue is in an instrument which

came into operation after 1882, and A, on whose death without issue the property is to go over, actually has issue who has lived to attain twenty-one. (Conveyancing Act 1882, sec. 10.) If the testator had died before 1st January, 1883, the objection would have been fatal.

Q. (a) *What is a power?* (b) *How do the estates created under a power take effect with respect to the settlement which contains the power?*

A. (*a*) A power in its widest sense is an authority. With regard to freeholds, a power may be defined as the means of causing a use, with its accompanying estate, to spring into existence at the will of a given person. Powers may be either common law powers, equitable powers, statutory powers, or powers operating under the Statute of Uses. There are also general powers and special powers; powers appendant, in gross, and collateral; and special powers may be either exclusive or non-exclusive. (*b*) As if such estates had been actually limited in the settlement itself.

Q. Give an example of a power (a) *operating at law,* (b) *in equity only,* (c) *under the Statute of Uses.* (d) *Under which class of power does the power of sale formerly inserted in a mortgage fall? And state shortly how it operates when exercised.*

A. (*a*) Power of attorney to collect a debt; or where a fee simple owner by will simply directs B to sell his land. (*b*) Any power of appointing the equitable interest in property given to an equitable life tenant, or a mortgagee's power of sale. (*c*) Grant of freeholds to A and his heirs to such uses as B shall by deed or will appoint, and in default of and subject to such appointment to the use of C and his heirs. (*d*) Equitable powers, for the mortgagee as legal owner could dispose of the property if he were not prevented by the rules of equity, and the effect of the power is to partially remove the restraint imposed by equity. A mortgagee selling in the absence of such a power could convey the legal estate, but

the purchaser's rights would be subject to the mortgagor's equity of redemption ; a sale under the power extinguishes the equity of redemption. (Goodeve's Realty, cap XI.; Elphinstone's Conveyancing, 8.)

Q. You are instructed to draw a conveyance of freehold land to A in fee simple, and to insert in the conveyance provisions authorising B to convey the land to any other person without A's consent. What is the proper method of framing these provisions? If B conveys under these provisions can he deal with the legal estate? State reasons for your opinion.

A. Convey the freehold land (1) to such uses as B shall by deed or will appoint, and (2) subject thereto to the use of A in fee simple. The power is an authority to cause a use with its accompanying legal estate under the Statute of Uses to spring up at the pleasure of B; so that if B appoints to C, the legal estate for life at once vests in C for life, and A is pushed aside, because all estates created under powers take effect as if they had been inserted in the instrument creating the power instead of the power itself.

Q. Define a general and a limited power of appointment. How are appointments thereunder affected by the rule against perpetuities?

A. A general power is one that may be exercised in favour of any one without restriction on the choice of the donee, and the rule against perpetuities applies as from the time when the power is exercised, *e.g.*, if exercised by deed from its execution, or if by will from the appointor's death. A special power is where the donee is restricted to exercise it in favour of specified persons or classes ; and here, as the property is really tied up to those special objects from the creation of the power, the donee cannot create any estate which could not have been created by the instrument conferring the power.

Q. Two funds of personalty are settled, one upon such trusts as A shall by will appoint, the other upon trust for A's

children as he shall by will appoint. A bequeaths both funds to such of his children as shall attain 23 *years. State the effect of the rule against perpetuities upon each of these appointments.*

A. Under the first settlement, A has a general power, the rule against perpetuities is applied from its exercise, and as all his children must attain 23 within the period fixed by the rule, the appointment is good. But as to the second fund, A has a special power, the rule is applied from its creation, and, as the appointment may transgress the rule, it is void.

Q. What are the legal requisites for the valid creation of a power?

A. There are three requisites to the valid creation of a power, namely, (1) sufficient words to denote the intention; (2) an apt instrument; and (3) a proper object. (Sugden, 102.) No technical or express words are necessary to create a power, provided the intention be clear. A power may be created by a deed or will. In powers operating under the Statute of Uses, the land must be conveyed to uses, and the power is only over the use, though by force of the statute the appointee takes the legal estate. The objects may be of any nature provided the rules of law or equity are not thereby transgressed. Care must therefore be taken in creating a power not to exceed by possibility the limits of the rule against perpetuities. (See Farwell on Powers.)

Q. Explain the distinction between powers and estates, and between powers collateral and those which relate to the land.

A. A power is a bare authority, which confers no ownership but may give an interest to the donee; whilst an estate is actual ownership of property, which, if accompanied by the legal seisin, entitles the owner to possession, and, if an equitable estate, entitles the owner to compel the legal holder to account for the profits. Powers collateral are powers, operating under the Statute of Uses, given to mere strangers

who take no interest in the land; whilst powers relating to the land are, also, powers operating under the Statute, but are given to persons having an estate in the land, and are either appendant, that is, may be exercised during the continuance of that estate, or in gross, that is, can only be exercised after the determination of the estate.

Q. State, giving examples, the rules governing the operation of excessive appointments under powers, and show in what cases the cy-près doctrine is applied to such appointments.

A. Where there is a complete execution of the power and something *ex abundanti* added, which is improper, the execution is good and the excess only void; but where there is not a complete execution of the power, where the boundaries between the excess and the execution are not distinguishable, it will be bad. The leading case of Alexander v. Alexander furnishes a good instance of an excessive execution of a power. The *cy-près* doctrine is applied in some cases of appointments by will, so as to give effect, as nearly as may be, to the testator's intention; thus, it has been decided that where a power of appointing land, or money to be laid out in land, is given in favour of children, and the power is exercised by will in favour of a child, with remainder to the children of such child in tail—here the Court will give an estate tail to the child to whom a life estate only is given by will. (Indermaur's Conveyancing and Equity Cases, 18, 19.)

Q. Give a summary of the legislation of the present century with reference to illusory and exclusive appointments.

A. Originally an illusory appointment was good at law though bad in equity. By 1 Wm. 4, c. 46, an illusory appointment is valid in equity as well as at law. An exclusive appointment was always void as not being a proper exercise of a special power of appointment. Now, by 37 & 38 Vict., c. 37, an exclusive appointment is good.

Q. Distinguish a common law power from a power operating under the Statute of Uses? Explain the operation of the power of sale formerly inserted in strict settlements.

A. A common law power is one recognised and given effect to by the courts of law, *e.g.*, a power of attorney to receive a debt; or a direction in a will that the executors, to whom no estate is given in the land, should sell testator's real estate. A power which operates under the Statute of Uses is an authority to create a use in freehold land, which is at once changed into the legal estate by the Statute, *e.g.*, if land be limited to A and his heirs to such uses as B appoints, and subject thereto to the use of C in fee. The trustees frequently took no estate in the land, and their power of sale was an equitable power, and it was necessary to insert in the settlement a further power to convey to the purchaser, and this latter power operated as the declaration of a use or by way of appointment. (Elphinstone, 9, 22.)

Q. Explain the difference in operation of the exercise of a power of sale by (a) *a legal mortgagee*, (b) *a trustee under an ordinary settlement of real estate*, (c) *a tenant for life selling under the Settled Land Act* 1882.

A. (*a*) This power depends either on contract or on the provisions of the Conveyancing Act 1881, and the mortgagee is by the power able to convey the estate to the purchaser free from the rule of equity that the mortgagor has an equity of redemption. (*b*) This depends on the settlement, and the trustee must keep strictly to its terms, and is only able under its powers to sell, and he conveys to the purchaser the estate vested in him by the settlement. (*c*) This depends on the statute, and is a purely statutory power, the tenant for life being able to pass a greater estate than he himself possesses.

Q. Enumerate and classify the different kinds of powers of sale.

A. (1) Common Law Powers, which take effect apart from the Statute of Uses. Thus, a direction in a will that X, who takes no estate in lands, should have a power of sale over them, would be a Common Law power, to be carried out by bargain and sale in exercise of a Common Law authority. The power given by the Settled Land Act 1882, to a tenant for life to sell and convey, is an analogous power. All powers over personalty come under this head, as the Statute of Uses has no application to personalty. (2) Equitable powers, *e.g.*, the power of sale in a mortgage deed. (3) Powers operating under 27 Hen. 8, c. 10, which may be either collateral or relating to the land (appendant or in gross).

Q. What is a power of attorney? How should a deed, executed under such a power, be signed? Is a deed so executed necessarily, or in any and what cases, invalidated by the previous death of the principal?

A. A power of attorney is an authority under seal given by one person to another to do a certain thing or to act generally for him, *e.g.*, where one goes abroad. A deed executed under such a power had formerly to be executed in the name of the giver of the power; but now the attorney may execute the deed in his own name (44 & 45 Vict., c. 41, sec. 46). Formerly, a deed executed under such a power would be of no effect if the principal were already dead or the power revoked; but if the power of attorney was created after 1882, and was (1) given for value and expressed to be irrevocable, or (2) in any case expressed to be irrevocable for a period not exceeding a year, which period had not expired at the time of execution, the death or revocation of the principal makes no difference to the power. (45 & 46 Vict., c. 39, secs. 8 and 9.)

Q. Explain the doctrine of "Cy-près," and state the classes of cases and properties to which it is applicable.

A. The principle of the doctrine is that where a testator has two objects, one primary or general, and the other

secondary or particular, and the latter cannot take effect, the Court will carry out the general object *as near as may be (cy-près)* to the testator's intention according to the law. (Wharton's Law Lexicon.) It is applied (1) to real property *devised* to an unborn person for life with remainder to his eldest son and the heirs of his body, by giving an estate tail to such unborn person; (2) to charitable bequests, by carrying out a *general* intention where the particular gift fails; and (3) to personal legacies accompanied by a condition precedent or subsequent, by holding that a substantial compliance with the condition is sufficient where a literal compliance is impossible from unavoidable circumstances without the fault of the legatee.

Q. Explain surrender and merger.

A. *A surrender* is the restoring or yielding up of an estate. It is usually applied to giving up a lease before the term expires, and its effect is to merge the estate of the surrenderor into that of the surrenderee. It may be (1) express, in which case it must be in writing, and if of more than a three years' term, by deed (29 Chas. 2, c. 3, sec. 3; 8 & 9 Vict., c. 106, sec. 3); or, (2) implied by act and operation of law, which is anything that amounts to an agreement by the tenant to abandon, and by the landlord to resume, possession of the demised premises, *e.g.*, delivery and acceptance of keys or creating a new tenancy. A surrender of copyholds is the giving up of the legal tenancy by an admitted tenant to the lord of the manor, either as a relinquishment of his estate, or as a means of conveying it to another. *Merger* is the annihilation by act of law of a particular estate in an expectant estate, consequent upon their meeting in the same person, in the same right, and without any intermediate estate (or where the estates so meeting are both freehold, subject only to an intervening term of years). An estate tail will not merge in the fee simple, because of the Statute De Donis; and any interest which is not an actual estate (*e.g.*, an

interesse termini, or a contingent interest) does not merge in an immediate estate. Where tithe rent-charge, and the land out of which the same is payable, belong to the same owner, he is empowered by statute to merge the tithe rent-charge in the land by deed with consent of the Land Department of the Board of Agriculture. (6 & 7 Wm. 4, c. 71.)

8.—Uses and Trusts.

Q. State the effect of the first section of the Statute of Uses. Does it apply to leaseholds for years?

A. Where one person is seised to the use, confidence, or trust of another, the section (1) turns the use, confidence, or trust into an estate, *i.e.*, says the legal estate shall be in the *cestui que use*, and (2) vests the estate of the person seised in the *cestui que use* for the same estate that the latter had in the use. The section enables a freeholder to create a term of years which requires no entry by the lessee to perfect it, and upon this depended the efficacy of the conveyance by lease and release under the statute; but it does not enable a lessee for years to transfer his leasehold interest or create a sub-lease. (Elphinstone, 20.)

Q. When was the Statute of Uses passed? What was its object, and what has been its effect in conveyancing? In what case is it necessary, and in what case is it unnecessary to limit a use in conveyance of freeholds?

A. In the reign of Henry 8 (27 Hen. 8, c. 10). Its object was to put an end to the practice of conveying land to uses. Its direct effect in conveyancing has substantially been only to add the words "to the use of" to conveyances; but, beyond this, it enables various limitations of the use, with its accompanying estate, to be made which could not be made directly of the estate. It is necessary to limit a use where there is no consideration; or there is more

than one person named, and it is desired that one shall take the legal estate, and another the equitable estate; also where, in a deed, limitations by way of executory interest are desired.

Q. *Distinguish a use from a trust, and trace the history of the distinction.*

A. By a use is meant the first use declared, being one which the Statute of Uses converts into the legal estate; whilst by a trust is meant a second or subsequent use on which the statute does not operate, but which confers, nevertheless, an equitable or beneficial estate. After the Statute of Uses, it was held in Tyrrell's Case that there could not be a use upon a use; and upon this the Court of Chancery held that an equitable or beneficial estate was created by the subsequent use which is called a trust.

Q. What is meant by saying that a conveyance operates by transmutation of possession? Does a conveyance in fee simple made (a) *by a tenant for life under the powers of the Settled Land Act,* (b) *by trustees under the power of sale formerly inserted in a strict settlement, operate in this manner?*

A. That the legal estate or seisin passes at common law or by the operation of some statute other than the Statute of Uses—in contradistinction to a conveyance which operates as the declaration of a use only, so that the grantee gets the legal estate by virtue of the Statute of Uses. In the former class, if uses are declared on the seisin of the purchaser, such uses give the legal estate; in the latter class, the uses merely give an equitable estate, as the Statute of Uses is already exhausted. (*a*) Apparently this conveyance may operate either by transmutation of possession or as a declaration of uses; in practice, it is always framed to operate by transmutation of possession. (*b*) This operates as a declaration of a use, and not by way of transmutation of possession. (Goodeve's Realty, 363, 365.)

Q. A grants freeholds to B "to hold to B and his heirs." State what becomes of the legal estate when the conveyance is made (a) *for good* (b) *for valuable* (c) *without any consideration. Give reasons for your statement.*

A. In cases (*a*) and (*c*) there is a resulting use to the grantor which gives him the legal estate under the Statute of Uses; but in case (*b*) the valuable consideration implies a use in favour of B, who therefore becomes the legal owner.

Q. A grants freeholds to B "to hold to B and his heirs" to the use of C for life, with remainder to the use of D and his heirs. What estates, if any, do B, C and D respectively take? Give reasons for your answer.

A. The habendum may explain or enlarge the premises but not lessen or contradict them. So that a fee simple is passed through the grantee to uses (B), and by the Statute of Uses C gets a legal estate for life with a legal remainder in fee simple to D.

Q. What methods of conveyance of land capable of being now adopted operate partially, and what entirely, under the Statute of Uses?

A. Those operating partly under the Statute of Uses are —(1) a feoffment to uses, which is a Common Law conveyance accompanied by a declaration of use of the estate limited in fee or for life, and (2) a deed of grant to uses. A bargain and sale and a covenant to stand seised operate entirely under the Statute of Uses. A lease and release consists of a limitation of a use under the Statute with a Common Law limitation added. (Edwards, 356, 360.)

Q. Distinguish the technical mode of operation of the following assurances: — "Lease," "release," "surrender," "bargain and sale," "grant."

A. *Lease* of land at common law is made by a grant of the land for the term of years intended to be created, followed by actual entry of the lessee, the grant merely passing an *interesse termini;* but a lease of an interest lying

in grant (*e.g.*, advowson, right of common) takes effect by virtue of the grant merely. *Release* is a deed conveying a further interest in land to a person already in possession, such further interest passing by the deed without further ceremony. *Surrender* is a conveyance of an estate for life or years in possession to one who has an immediate remainder or reversion in which the estate conveyed is capable of being merged; the deed expresses that the surrenderor yields up his interest to the surrenderee, and the estate surrendered merges at once without any actual delivery of possession. *Bargain and sale* is a contract to sell an estate accompanied by payment of the price; this gives rise to an implied use in the purchaser and the Statute of Uses at once gives the purchaser the legal estate without entry; it must now be by deed enrolled under 27 Hen. 8, c. 16. *Grant* is a deed by the execution of which any interest in real property (except an estate in possession in a corporeal hereditament) can be passed at common law, and since 8 & 9 Vict., c. 106, such exception may also be passed. (Edwards, 315, 317, 318, 325, 314, 328.)

Q. In a conveyance on sale of freehold land the ordinary form of the habendum is "To hold the said premises unto the purchaser and his heirs to the use of the purchaser, his heirs, and assigns, for ever." Which of those words are, and which of them are not essential, and why?

A. The words "to the use," &c., are not required, for the purchaser pays a valuable consideration and the preceding part of the habendum is all that is needed. If the conveyance had been voluntary, all the words given above are needed, otherwise there would be a resulting use to the grantor which would revest the legal estate in him.

Q. What difference in effect is there between a limitation in a deed unto and to the use of A and his heirs, and a limitation to A and his heirs to the use of B and his heirs?

A. In the first case A takes the legal and beneficial estate,

not by force of the Statute of Uses, for there is no one seised to the use of another, but he is in by Common Law. In the second case A has nothing, being merely a conduit pipe for passing the estate to B, and B will have a legal and beneficial estate; but B is here possessed of his estate not by the Common Law, but by force of the Statute of Uses.

Q. If land is conveyed by deed to A to the use of B, his heirs and assigns, and A dies, what happens?

A. The estate granted to B determines, as only an estate for A's life is passed through A, and the person to whom the use is granted cannot have a larger estate than is passed through the grantee to uses or conduit pipe.

Q. What were the objects and advantages of using the conveyances called a bargain and sale, and a lease and release?

A. A bargain and sale was used to convey freeholds without the inconvenience and publicity of a feoffment with livery of seisin. A lease and release was used to avoid the necessity of inrolment under 27 Hen. 8, c. 16. A bargain and sale prior to 27 Hen. 8, c. 10, created a use enforced by a Court of Equity though disregarded by Common Law Courts; the statute turned this use into possession; 27 Hen. 8, c. 16, required a bargain and sale of freehold to be by deed, enrolled at Westminster within six months. But as the last-named statute did not apply to a bargain and sale for a term of years, whilst the Statute of Uses did (if created by a freeholder), the practice was adopted of making a bargain and sale for a year, which gave the lessee the feudal possession without entry, and then executing a deed of release dated the following day, by which the entire fee simple was passed to the bargainee.

Q. Explain the operation of the common conveyance called lease and release. Did either of the deeds by which this conveyance was effected operate by transmutation of possession?

A. The lease operated under the Statute of Uses and the release at Common Law. The lease had to be made by the freeholder, and took the form of a bargain and sale for value for a year; this operated as a declaration of a use, but did not fall within the Statute of Inrolments, and the lessee immediately on the execution of the lease became seised in possession without actual entry under the Statute of Uses; and being in possession he could by the Common Law take a release of the reversion in fee. The lease (or bargain and sale for a year) operated under the Statute; the release operated by transmutation of possession.

Q. Explain and illustrate—"Even now a common purchase deed of a piece of freehold land cannot be explained without going back to the reign of Henry 8, *or an ordinary settlement of land without having recourse to the laws of Edward* 1."

A. (1) In a purchase deed the land is conveyed unto and *to the use of* the purchaser. The words in italics were rendered necessary by the Statute of Uses in voluntary conveyances to prevent a resulting use of the legal estate to the grantor; and although the valuable consideration renders them unnecessary in the purchase deed, they are always inserted. The Statute of Uses does not really apply to such a limitation, as it only relates to cases where land is conveyed to X to the use of Y; and where the conveyance is unto and to the use of X, X is said to be in by the Common Law. (2) In an ordinary settlement of land, uses are always inserted, which can only be explained by reference to the Statute of Uses; and estates tail are limited to the first and other sons of the marriage, and they can only be explained by reference to the Statute De Donis which created them.

Q. Explain the doctrine of Scintilla juris.

A. *Scintilla juris* was a doctrine by which it was contended that, where lands are conveyed to B and his heirs to the use of A and his heirs until some event (*e.g.*, a marriage)

and then to the use of C and his heirs, a possibility of seisin remained in B until the event sufficient to enable C's use to be transmuted into the legal estate when the event happened; it was abolished by 23 & 24 Vict., c. 38, sec. 7, enacting that every use limited by a conveyance shall take effect by force of the seisin originally vested in the grantee to uses, *i.e.*, B.

9.—Alienation Inter Vivos.

Q. Describe a feoffment and its necessary incidents. Has it any peculiar efficacy at the present day? If a feoffment be made to A and his heirs in trust for B and his heirs, what estates do A and B respectively take?

A. A feoffment was the Common Law conveyance used to pass a freehold estate in possession in a corporeal hereditament, and was perfected by livery of seisin (*i.e.*, delivery of the feudal possession) which was either (1) livery in deed, which took place on the lands, and could be performed by a deputy, or (2) livery in law, which took place within sight of the lands; writing was unnecessary until 29 Car. 2, c. 3, made it so by sec. 1 as to creation, and sec. 3 as to assignment of estates in land: by 8 & 9 Vict., c. 106, it must be by deed after 1st October, 1845, except when made by an infant under the custom of gavelkind; the word "give" was the technical term used in enfeoffing another. The publicity of delivery made a feoffment operate by wrong where the owner in possession of an estate granted out a larger interest than he possessed, so as to disseise the lawful owner until he re-asserted his estate by exercising his rights of entry; since 1845 no feoffment can operate by wrong, 8 & 9 Vict., c. 106. The word "give" in a feoffment implied a warranty of title; but since 8 & 9 Vict., c. 106, this is no longer so. A feoffment may still be used, but has now no practical advantage. It is the basis on which modern deeds

have been formed. By the Statute of Uses, 27 Hen. 8, c. 10, A takes nothing, but is a mere conduit pipe to pass an estate to B, who gets the fee.

Q. How far is it correct to say that a man cannot legally convey to himself?

A. At Common Law a man could not occupy the position of grantor and grantee, and thus two conveyances were needed—(1) a conveyance to a third person, and (2) a conveyance from such third person to the original grantor, or to him and another. But under the Statute of Uses, one conveyance only is needed, as the interposition of a grantee to uses enables the grantor to settle his own fee simple on himself for life or in tail, or to convey it to himself and another. And since 1881, freehold land can be conveyed by a man to himself jointly with another without the interposition of a grantee to uses (44 & 45 Vict., c. 41, sec. 50.)

Q. Explain the different effects of executing a contract for sale in the case of real estate and personal chattels respectively.

A. As regards real estate, the legal ownership remains in the vendor until a proper deed of conveyance is executed; and although *in equity* the lands belong to the purchaser and the purchase-money to the vendor, *at law* each party merely acquires the right to sue the other for damages on breach of the contract. But as regards personal chattels, the legal ownership is transferred from the vendor to the purchaser without the necessity of anything further, provided the contract contains the legal requisites for a sale.

Q. State the different modes of alienation of personal chattels.

A. (1) By a mere gift accompanied by delivery—and the words of gift and the delivery may be contemporaneous, or either may precede the other; (2) by deed; (3) by sale; and (4) by will.

Q. What is meant by delivery of a deed? What is an escrow? A, by deed, duly executed in the presence of his

solicitor, assigned his equitable interest in a fund comprised in his father's marriage settlement to B, but retained possession of the deed and destroyed it without either the trustees of the settlement or B having notice of the deed. Can B claim the benefit of the assignment on proving the delivery and contents of the deed?

A. Any words or signs showing an intention to deliver the document as a deed, *e.g.*, touching the seal and saying you deliver it as your act and deed, or handing the document to the grantee; what is a sufficient delivery is a question of fact to be ascertained from all the surrounding circumstances. An escrow is a deed delivered to some person who is *not* a party to it to take effect on a specified event. If the assignment was voluntary it was complete, and B can claim the benefit of it, for the destruction of a perfect deed does not vitiate it; if the assignment was for value, then B can only claim the benefit on giving the value. (Elphinstone, 54-56.)

Q. What is the use of "narrative" and "introductory" recitals? What is the effect of discrepancy between the recitals and the operative part of a deed? By an indenture made between A and B reciting that "B had agreed to lend £10,000 *to A on mortgage of Blackacre, payable with interest at the rate and on the day hereinafter mentioned": the operative parts of the deed consist of the usual covenants for payment of principal and interest, and of the conveyance of Blackacre to B in fee simple, "subject to redemption as hereinafter expressed," but the proviso for redemption is omitted. What interest does B take in Blackacre?*

A. *Narrative* recitals show the nature of the property that is to be dealt with by the deed; *introductory* recitals explain what is intended to be done by the deed. If both recitals and operative words are clear but inconsistent, the operative words govern; if one is ambiguous and the other clear, the one which is clear governs. B takes the fee simple as mortgagee subject to redemption. (Elphinstone, 67-70.)

Q. What is the object of the habendum? Draw the habendum in a conveyance of freeholds to a purchaser by mortgagee selling under the statutory power of sale?

A. To mark out the quantity of interest taken by the grantee. To hold the same unto and to the use of the purchaser in fee simple free from all equity of redemption or claims or demands under the mortgage. (Elphinstone, 100, 121.)

Q. What are the usual covenants in purchase deeds and mortgage deeds of freeholds, copyholds, and leaseholds respectively? Is there any difference between such covenants in purchase deeds and those in mortgage deeds?

A. In a purchase deed of freeholds, the usual covenants are that the vendor has good right to convey, for quiet enjoyment, free from incumbrances, and for further assurance. In a mortgage of freeholds the same covenants are inserted, with another for payment of the mortgage money. In a deed of covenant to surrender copyholds on a sale, the usual covenants are by the vendor to surrender to the use of the purchaser, for good right to surrender, for quiet enjoyment, free from incumbrances, and for further assurance. In a similar deed on a mortgage, the usual covenants are to surrender to the use of the mortgagee conditionally, and the same four other covenants as on a sale, and a covenant to repay the mortgage money. In a purchase deed of leaseholds, the usual covenants are (1) by the vendor that the lease is valid, and the rent and covenants have been paid and performed up to date, for good right to assign, for quiet enjoyment during the term, free from incumbrances, and for further assurance; and (2) by the purchaser, to pay rent and perform covenants during the term and to indemnify the vendor therefrom. In a mortgage deed of leaseholds by underlease, the usual covenants are by the mortgagor for right to demise, quiet enjoyment after default, free from

incumbrances, for further assurance, to insure against fire, and to pay the rent and perform the covenants in the original lease and indemnify the mortgagee therefrom; if the mortgage is by deed of assignment then the covenants are the same, except that the first covenant is for right to assign. The practical difference between covenants for title in a purchase deed and a mortgage deed is that in the latter the mortgagor covenants absolutely against all the world, whilst in the former the vendor only covenants for himself and those claiming through him and those through whom he claims since the last conveyance for value, not being a marriage settlement. (See Prideaux, Vol. I.)

Q. Under sec. 7 of the Conveyancing Act 1881, *what covenants are implied by conveying "as beneficial owner," in a conveyance for valuable consideration of freeholds and leaseholds on a sale, and by way of mortgage respectively; and what covenants are implied by conveying "as settlor" in a conveyance by way of settlement?*

A. On a sale of freeholds, the same four qualified covenants for title stated in the preceding answer; and on a mortgage, the same four absolute covenants for title. On a sale of leaseholds, the same five qualified covenants for title by the vendor that are set out in the preceding answer; and on a mortgage, the same five absolute covenants, and one to pay rent and perform covenants and indemnify the mortgagee are implied. In the settlement, the only covenant implied is one (limited to the settlor and those claiming through him) for further assurance.

Q. A buys a plot of building land from B and covenants that he will lay out £1,000 *in building on the land, and also that he will not use any building on the land for a manufactory. A sells the land to C. Can the covenants, or either of them, be enforced by B against C?*

A. By the rules of Common Law, the burden of a covenant relating to freehold land does not run with the

land, and neither covenant could be enforced against C. But in equity, the burden of a restrictive covenant runs with the land to any one who takes with actual or constructive notice of it, so that an injunction can be obtained by B against C as regards the manufactory. (Tulk v. Moxhay, 2 Phil., 774.) And since the Judicature Acts, the rule of equity prevails.

Q. Give an analysis of a conveyance by a vendor seised in fee simple to a purchaser on sale, stating the names of the different parts of the conveyance.

A. Date; parties—(1) vendor, (2) purchaser; recitals, if any; witnessing part, consideration, receipt, operative words, vendor *as beneficial owner* hereby conveys to purchaser and his heirs; parcels; habendum and tenendum—unto and to the use of the purchaser in fee simple; testimonium. (Prideaux, Vol. I.)

Q. Sketch, in outline, a conveyance of freeholds on a sale by mortgagor and mortgagee.

A. Date; Parties—(1) mortgagee, (2) mortgagor as vendor, (3) purchaser; Recitals.—(1) of mortgage, (2) of agreement for sale, (3) of sum now due on mortgage, and (4) agreement to pay off mortgage out of purchase money; Testatum that in consideration of £ paid to mortgagee by direction of mortgagor (receipt acknowledged) and of the balance of purchase-money paid to mortgagor (payment and receipt acknowledged). The mortgagee *as mortgagee by direction of the mortgagor as beneficial owner* conveys and the mortgagor *as beneficial owner* conveys to purchaser; Parcels; Habendum to purchaser in fee freed from said mortgage; Testimonium. (Prideaux, Vol. I.)

Q. Conveyance to the purchaser of freehold land contracted to be sold to him by a testator who died in 1883, *having by his will devised the land to his son John in fee, and appointed his wife his executrix; state who is entitled to the purchase-money, and who can convey the estate.*

A. The contract for sale operates as a conversion, and the wife, as executrix, is entitled to the purchase-money. If the contract were binding on, and enforceable by, both vendor and purchaser at the death, the vendor was a trustee, and the legal estate passed to the widow, as executrix, by sec. 30 of the Conveyancing Act 1881, and she only can convey; but if the contract were not so binding on, and enforceable by, both parties, then either the widow, as executrix, can convey under sec. 4 of the Conveyancing Act 1881, or the devisee can convey.

Q. What is meant by a vendor's lien for unpaid purchase-money, and how can it be enforced? How is the actual receipt of the purchase-money usually acknowledged in a conveyance on sale?

A. The right of a vendor to have his unpaid purchase-money satisfied. *As regard goods*, this lien is a mere passive right to retain possession until the purchase-money is paid, and is lost by parting with the possession to the purchaser. *As regards lands*, the lien is an equitable right to have the unpaid purchase-money with interest at 4 per cent.; it commences only when the vendor parts with possession of the lands to the purchaser; and it may be enforced as a constructive trust by an action in the Chancery Division. Where the purchase deed was executed before 1882, both by a receipt in the body of the deed and a signed receipt indorsed on the back; but since 1881, a receipt in the body of the deed is sufficient. (44 & 45 Vict., c. 41, sec. 54.)

Q. What restrictions are placed on constructive notice by the Conveyancing Act 1882, *sec.* 3?

A. In every purchase, lease, mortgage, or taking or dealing for valuable consideration, of or with real and personal property, debts, choses in action, and any right or interest in the nature of property, whether in possession or not, the "purchaser" is not to be prejudicially affected by notice of any instrument or fact or thing, unless (1) it is within his own

knowledge, or (2) would have been if he had made such inquiries and inspections as he reasonably ought to have made, or (3) in the same transaction with respect to which the question of notice arises, it has come to the knowledge of his counsel, solicitor, or other agent, as such, or (4) would have come to the knowledge of his solicitor or other agent, as such, if he had made such reasonable inquiries and inspections as he ought. But the "purchaser" is not relieved from any covenant, condition, proviso, or restriction in any instrument under which his title is derived; and he is not to be affected by notice where he would not have been affected if the section had not been enacted.

Q. What is "goodwill"? On a sale of it, what covenant should the buyer require from the seller, and why?

A. Goodwill is the benefit arising from connection and reputation, or the probability of the old customers going to the new firm which has acquired the business. A covenant that the vendor will not set up business in the same line within so many miles of the old place of business, and that he shall in no way solicit the former customers to deal with him. In the absence of this covenant, there is nothing to prevent the vendor setting up business next door to his old place of business, and soliciting his old customers in any way he likes; the only restriction being that he must not hold himself out as the old firm. (Pearson v. Pearson, 54 L. J., Ch., 32.)

Q. What are choses in action; and what practical difference has been made in the mode of assignment of them by the Judicature Act?

A. A chose in action is the right to bring an action to recover some debt or other thing resting in action. Formerly it was not assignable at law, and the plan adopted was to give the assignee a power of attorney to sue in the assignor's name. But now, under the Judicature Act 1873,

sec. 25 (6), a legal chose in action may be assigned absolutely by writing under the hand of the assignor, notice in writing being given to the holder of the chose, and the assignee can then sue in his own name.

Q. State briefly the principal rules regulating the transfer and mortgage of British ships.

A. The transfer is by bill of sale under the Merchant Shipping Act 1854, attested by one witness, accompanied by a declaration that the transferee is entitled to own a British ship, and registered at the port of registry. A mortgage is made in the same way; the mortgagee does not thereby become the owner, except so far as may be necessary to enforce his security; the mortgagee has a power to sell and to give receipts; the mortgagee is not affected by bankruptcy of the mortgagor; the mortgage ranks as from registration; and is discharged by the mortgage deed with a receipt indorsed being produced to the registrar who enters up satisfaction of it in the registry.

Q. A testator bequeathed a leasehold house to A, and appointed B his executor. A has agreed to sell the house to C, and B has agreed to sell it to D. Which contract can be enforced, and what compensation, if any, can the disappointed purchaser obtain?

A. The fact of B having contracted to sell the house shows he had not assented to the legacy; A's title is, therefore incomplete, and without that assent his contract to sell to C is valueless. As the house vests in the executor with all the other personalty for payment of debts, B's contract is a valid one, and D can enforce specific performance and have it enforced against him. If the executor had assented to the legacy, A would have had an absolute title, and his contract would have prevailed. The only remedy of the disappointed purchaser is by an action for damages, and the return of his deposit (if any).

Q. Freehold land was devised to A for life, remainder to

his son B in tail, remainder to the right heirs of A. A has died intestate, leaving B his heir. C has bought the land from B. How should he take the conveyance, and to whose acts should the covenants for title extend?

A. B possesses an estate tail in possession with a fee simple in remainder by descent, there being no merger of an estate tail. B must execute and enrol a disentailing deed, and then convey the absolute fee simple so acquired by ordinary deed of grant; or, as B has all the powers of a tenant for life under the Settled Land Act 1882, he may sell and convey the fee simple under that Act, but then the trusts of the settlement will attach to the purchase-money. In the former case, B will covenant for the acts of himself, of those claiming under him, and of those through whom he claims since the last conveyance for value, not being a marriage settlement; in the latter case, as the tenant for life is a trustee as regards the exercise of his powers under the Settled Land Acts, he will only covenant for his own acts.

Q. What are the essential attributes of mortis causâ donations?

A. The donation must be made under the impression of impending death; to take effect if the donor does not recover from his present sickness, and does not revoke the gift before his death; must be of personal property; evidenced by delivery of the thing given, or the means of obtaining possession of it, or the title to it, to the donee, or some one for him, by the donor, or some one for him, in his presence and by his direction. It is liable to the donor's debts, to probate duty, and to legacy duty. It may be of a bond, of bills or notes, or cheques payable to the order of the donor, though not indorsed, or of a policy of life assurance, etc.; but not of the donor's own cheque, unless cashed in his lifetime.

Q. What is necessary to enable the assignee of a policy of life assurance to sue on the policy in his own name?

A. The assignment must be duly stamped, and the

specific property of which the testator was then possessed; but now, a will speaks from the testator's death, and passes all his property at the time of death, except (1) where a contrary intention appears, or (2) the will is made by a married woman during coverture under the Married Woman's Property Act 1882, in which case it is specific and only passes property of which she actually becomes possessed during the coverture. (*In re* Price, Stafford v. Stafford, 28 Ch. D., 709; 54 L. J., Ch., 509.)

Q. State the several ways in which a will may be revoked, and how any obliteration, interlineation, or other alteration in a will after its execution must be made in order to be effectual.

A. A will is revoked—(1.) By marriage; except a will made in exercise of a power of appointment when the property appointed, would not, in default of appointment, go to the heir, customary heir, or next-of-kin of the appointor. (2.) By burning, tearing, or otherwise destroying it, with the intention of revoking it. (3.) By any writing executed as a will, and declaring an intention to revoke it. (4.) By a subsequent will or codicil, so far as inconsistent. No obliteration, interlineation, or other alteration in a will made after its execution is valid unless such alteration, &c., is executed as a will. (1 Vict., c. 26, secs. 18, 20.)

Q. Distinguish "specific," "general," and "demonstrative" legacies. How is the doctrine of ademption affected by the distinction? If a testator makes a will, leaving to A a sum described as now "owing to me on mortgage from B," and afterwards the mortgage is paid off, and the money received by the testator and invested on another mortgage, is A's legacy gone?

A. *A specific legacy* is a bequest of a particular thing, or sum of money, or debt, belonging to the testator, as distinguished from all others of the same kind, *e.g.*, my diamond ring, or the thousand pounds owing to me by C. *A general legacy* is a bequest to be satisfied out of the general personal

estate, *e.g.*, a diamond ring, or a thousand pounds. *A demonstrative legacy* is a bequest, which in its nature is a general legacy, but there is a particular fund pointed out to satisfy it, *e.g.*, a thousand pounds out of my consols. A specific legacy alone is liable to ademption, *i.e.*, the legatee loses the particular thing if testator does not own it at his death; but general legacies and demonstrative legacies are not liable to ademption—except when given to a child and a subsequent portion is given by the parent during his life, which will be a satisfaction or ademption *pro tanto*. The legacy to A is specific and adeemed, for there exists nothing at the death on which the will can operate. (2 White & Tudor, 236, 282.)

Q. What is meant by "ademption"? In what different ways can it take place, and what alteration in the application of the doctrine resulted from the passing of the Wills Act (1 *Vict.*, *c.* 26)?

A. Ademption usually means the failure of a specific devise or legacy because the testator does not own the particular thing given at the time of his death; but, by analogy to the ademption of a specific legacy, the equitable doctrine of satisfaction of portions is termed ademption when the parent makes a provision for a child by will, and subsequently during his lifetime makes a settlement upon that child, the idea being that money which would have passed under the will has been taken out of the will by reason of the subsequent settlement. The alteration made by the Wills Act was to annul the old rule that ademption took place if testator acquired an interest different from the one he possessed at the date of making his will in the subject of the devise or bequest. (Edwards, 407.)

Q. Give an instance of a general, a specific, and a demonstrative legacy. And state out of what funds, or property, each kind of legacy is payable.

A. A general legacy is one to be satisfied out of the general

Q. How far is a provision that a life interest given to any person under a settlement shall cease on bankruptcy or alienation valid?

A. Unless there is a gift over, it is simply void. But assuming there is a gift over, then (1) if the property settled comes from the life tenant, the gift over is good against his alienees, but void against the trustee under his bankruptcy; but (2) as regards property coming from any other person (*e.g.*, where such an interest is given to the husband in a settlement of the intended wife's fortune) the provision is altogether good; and (3) if a husband has received part of his wife's fortune on the marriage, and settled his own property with such a life interest for himself, the provision is good to the extent of the wife's fortune which he so received. (Prideaux, Vol. II., 250, 251.)

Q. What are the requisites and incidents of dower and freebench?

A. *Dower* is a life estate which a widow takes in a portion (usually a third) of her husband's lands of inheritance. At Common Law, it attached the instant the husband became solely seised in possession, unless barred by a conveyance to user to bar dower or jointure or a fine. As regards marriages since 1834, its requisites under 3 & 4 Wm. 4, c. 105, are (1) marriage, (2) death of the husband, leaving some estate of inheritance (either legal or equitable) not disposed of by him, and without his having barred the dower, which he may do by a simple declaration in any deed or his will. *Freebench* is dower out of copyholds. Its requisites are (1) a custom in the particular manor allowing it, (2) death of the husband leaving some estate undisposed of by him out of which, according to the custom, she may claim it. 3 & 4 Wm. 4, c 105, does not apply to freebench.

Q. Describe the nature and incidents of a tenancy by the curtesy.

A. It is a life estate which the husband takes in all his

wife's lands of inheritance in possession, of which she was the legal or equitable owner in severalty or in common, provided (1) he survives her, (2) there was a legal marriage subsisting at her death, and (3) issue born alive capable of inheriting. It attaches to separate use property, unless the wife has disposed of it by deed or will. (Hope v. Hope, 61 L. J., Ch., 441.) As to gavelkind lands, it is independent of the birth of issue, but only extends to a moiety, and ceases on re-marriage. A tenant by curtesy (but not a tenant in dower) has all the powers of a tenant for life under the Settled Land Acts.

Q. By what methods can dower be barred? State the rule as to legacies in satisfaction of dower.

A. If the parties were married since 1st January, 1834, the dower may be barred by a simple declaration under 3 & 4 Wm. 4, c. 105, contained in any deed or will, or by any disposition of the lands. If prior to that date, it can be barred by legal jointure, a fine, or uses to bar dower. The point as to a legacy in satisfaction of dower would practically only apply to persons married on or before 1st January, 1834. Where the will contains provisions inconsistent with the right to dower, the legacy will satisfy it in the sense that she will be put to her election and not allowed to claim the dower and the legacy. Even at the present day if a husband married since 1833, dies intestate as to land, out of which his widow would be dowable, but makes a will of personalty giving her a legacy in lieu of dower, such a legacy is entitled to priority over other legacies. (Greenwood v. Greenwood, 61 L. J., Ch., 558.)

Q. What was the modern form of a limitation to uses to bar dower, and in what does its efficacy exist?

A. A general power of appointment was given to the purchaser by limiting the land to such uses as he should appoint—this enabled him to dispose of the fee simple without his wife's concurrence; in default of and until

appointment, the land was limited to the use of the purchaser for life; and on determination of that estate, by any means, in the purchaser's life, a vested remainder was given to a trustee and his heirs during the purchaser's natural life in trust for him; with an ultimate remainder to the use of the purchaser and his heirs. The efficacy was that it prevented dower attaching, for during the life of the purchaser he had no estate of inheritance in possession because the vested estate given to the trustee prevented the legal life estate of the purchaser merging in the legal fee simple remainder.

Q. What are a wife's pin-money, jointure, and paraphernalia; and what arrears of pin-money are recoverable by her and her legal personal representative respectively?

A. Pin-money is a yearly allowance secured to the wife by ante-nuptial settlement for dress and personal expenses suitable to the position of the husband. The wife can recover one year's arrears, unless the husband has paid all her personal expenses, in which case she can recover nothing; unless she has complained and been assured by her husband that she will have it ultimately, in which case she can recover all the arrears. The wife's representatives cannot (from the very nature of the property) recover any arrears. *Legal jointure* is a competent livelihood of freehold for the life of the wife at least, to take effect presently in possession or profit after the death of the husband; it was an effectual bar of dower; it had to be made to the wife directly and not to any one in trust for her, and in lieu of her whole dower, and before marriage. *Equitable jointure* is a provision out of freeholds lacking any of the above-mentioned particulars, or a provision out of personalty; and only put the wife to her election between it and her dower. *Paraphernalia* comprise the wife's wearing apparel and ornaments and gifts of jewels, &c., from her husband, to which she is entitled, beyond her dower, provided the husband predeceases her without having disposed of them in his life. They are liable

to the husband's debts, and must carefully be distinguished from separate estate.

12.—Incorporeal Hereditaments.

Q. Enumerate and classify the principal kinds of incorporeal hereditaments.

A. According to Blackstone, incorporeal hereditaments are chiefly of 10 sorts. 1. Advowsons. 2. Tithes. 3. Commons. 4. Ways. 5. Offices. 6. Dignities. 7. Franchises. 8. Corrodies or pensions. 9. Annuities. 10. Rents. They have been classified as 1. Appendant. 2. Appurtenant. 3. In gross.

Q. Mention the characteristics of commons, (a) *appendant;* (b) *appurtenant;* (c) *in gross.*

A. *Common appendant* arose from necessity, and was the Common Law right of every free tenant of *arable* land to depasture on the lord's wastes all cattle needed for tillage and manurance of the land (*i.e.*, horses, cattle, and sheep, which are thence called commonable beasts); the number of beasts put on was not to exceed as many as the common would feed during the winter; as it is of common right it need not be prescribed for, and on a sale of part of the lands in respect of which it arises, it can be apportioned; and it passes along with the lands in respect of which it arises. *Common appurtenant* is annexed to some corporeal hereditament, but is against common right because it depends on a special grant (either express or implied from long usage); it cannot be apportioned, and fails altogether when it cannot be exercised in its integrity; it may be created at the present day; and it also passes along with the property in respect of which it is claimed. *Common in gross* is the right of the owner to a *profit à prendre* out of the lands of another, arising by express grant to the commoner, and not as appendant or appurtenant to any corporeal hereditament; it requires a deed for its transfer. (See Tyrringham's Case.)

Q. Explain the rule that rent-charges and rights of common appurtenant should be regarded as being "against common right." What consequences have been deduced from the rule with respect to hereditaments of these kinds?

A. They are not of common right, for they do not arise by implication of law only as did common appendant, but by express grant, or (as to common appurtenant) by prescription or custom; and, unlike common appendant, they may be created at the present day. Common appendant was extinguished by purchase of all the lands over which the right existed; but rent-charges and commons appurtenant were regarded as entire and issuing out of every part of the land charged. Consequently, the purchase or release of any part of the lands subject to a rent-charge, or common appurtenant, destroyed the charge or common. By 17 & 18 Vict., c. 97, the rent-charge was made apportionable, and by 22 & 23 Vict., c. 35, the release of a portion of the lands from the rent-charge no longer destroys the whole rent-charge.

Q. What are the principal methods by which rights of common may be extinguished?

A. By express release; unity of seisin; or abandonment.

Q. What is an easement? State what is meant by an affirmative easement, and what is meant by a negative easement. Give an instance of each.

A. An easement is a privilege without profit which the owner of one tenement, which is called the dominant tenement, has over another, which is called the servient tenement, to compel the owner thereof—(1) to permit to be done, or (2) to refrain from doing, something on the servient tenement for the advantage of the dominant tenement. The former is called an affirmative easement, and the second a negative easement. An instance of the former would be where the owner of Whiteacre has a right-of-way over Blackacre, he can compel the owner of Blackacre to permit him to go along the way. An instance of the second would be

where the owner of Whiteacre has ancient lights in a house on his estate, he can restrain the owner of Blackacre from doing any act on Blackacre which will deprive him of his accustomed light and air.

Q. Explain prescription and custom; continuous and discontinuous easements.

A. Prescription, which is personal, is for the most part applied to persons being made in the name of a certain person and his ancestors, or of those whose estate he held, or in bodies politic or corporate and their predecessors; but a custom, which is local, is alleged in no person, but laid within some manor or other place. Continuous easements are those of which the enjoyment is, or may be, continual without the necessity of any actual interference by man, as a waterspout, or right to light and air, or drains; discontinuous easements are those the enjoyment of which can only be had by the interference of man, as rights-of-way or a right to draw water.

Q. Under what circumstances does there arise a way of necessity? How is it limited, and by whom is it to be selected, where more than one way is available?

A. A way of necessity arises either where a man grants a piece of land in the middle of his field, or where the grantor conveys all the lands surrounding his field and retains the field, provided in neither case an express right-of-way is granted or reserved. It is limited to such a right-of-way as will enable the owner of the close to enjoy it in the same condition as at the time of the grant, *e.g.*, if the close is arable or meadow, the owner may not put up houses and claim a right-of-way to them for his tenants. (Corporation of London v. Riggs, 13 Ch. Div., 798.) The grantee is restricted to such one way as will be convenient for the reasonable enjoyment of the premises; but, subject to this rule, the grantor is probably justified in assigning such a way as he can best spare. (Woolrych on Ways, 34.)

Distinguish easements from those rights which, though ır to them in other respects, are not annexed to the ship of land.

The distinction is that easements are rights of pro- enjoyed by a person *as accessory to his* ownership of and for its convenience over the land of another, by ı whereof the latter is bound to permit some definite ıot involving participation in the soil or its produce) of nd, or to refrain from some particular use of it; whilst sement in gross is a right similar in extent but not an- to the ownership of land, and exists because of a :e to do on another person's land that which, without licence, would be a trespass, and is not alienable, and be determined at any time by the withdrawal of the :e. (Edwards, 297, 298.)

Define the easement of watercourse, and explain the us methods by which it may be acquired.

The right which a man has to the benefit of the flow of in a defined channel. It may be acquired by express , or implied grant, or prescription under 2 & 3 Wm. 4, or statute. (Sury v. Pigot, Indermaur's Conveyancing Equity Cases, 11.)

By what means may easements be extinguished?

They may be extinguished by express release, by)f Parliament, by unity of seisin, or by abandonment.) abandonment, it is not necessary to show any definite l of non-user; it is not so much the duration of the r as the nature of the act done by the grantee of the ıent, or of the adverse act acquiesced in by him and the tion in him which either the one or the other indicates, ı are material. As to extinguishment by unity of seisin, will not occur where the easement is one of necessity, or me right arising *ex jure naturæ*. (Sury v. Pigot, and s, Indermaur's Conveyancing and Equity Cases, 11.)

Q. Explain what is meant by prescription. What change was made by the Prescription Act?

A. *Prescription* means the acquisition of a title to an incorporeal right by means of immemorial user, which implies a grant. The right can be claimed either as being exercised in gross by the claimant and his ancestors; or, as being exercised as appendant or appurtenant to lands held by the claimant and his ancestors. Formerly a title by prescription could only be acquired by enjoyment time out of mind, *i.e.*, since the first day of the reign of Richard 1; then the judges established an artificial rule by which 20 years adverse and uninterrupted enjoyment of an incorporeal hereditament uncontradicted and unexplained, was cogent evidence from which the jury should be conclusively directed to presume a grant or other lawful origin of the possession. The Prescription Act, 2 & 3 Wm. 4, c. 71, enacted that if the right is claimed as appendant or appurtenant and not in gross—rights to light are to be indefeasible after enjoyment without interruption for 20 years, unless enjoyed by consent in writing; and that rights-of-way and other easements (except light) are not to be defeated, after 20 years of such enjoyment by merely showing the precise time when they began to be enjoyed, and after 40 years are to be indefeasible; and as to rights of common and other *profits à prendre* (except tithes, rent, and services) fixed the periods of thirty and sixty years. The time must be reckoned back from the date of action brought; and interruption must be acquiesced in for a year after notice, or it is of no avail.

Q. What interest has the owner of an advowson in the parsonage house and glebe lands? If he sells the advowson during a vacancy of the living, what result ensues?

A. As patron, he enjoys the perpetual right of presentation to the benefice; but he has no property or interest as such in the parsonage house and glebe lands. The advowson passes with the exception of the right to present on that

particular vacancy, which is considered too sacred a thing to be bought and sold, the sale of such a right being simony; the vendor accordingly presents whom he will, and, if he does not present within six months, the right lapses to the bishop, and in turn to the archbishop and, finally the Crown.

Q. Define a rent-charge. How can it be created, and in what different ways can it be determined?

A. A rent-charge is a rent payable by the owner of land, otherwise than as a tenant, and expressly charged upon the land. It may be created by grant *inter vivos* or by will. It may be determined (1) by effluxion of time where granted for a limited period; (2) by determination of the estate on which it is charged; (3) by merger; (4) by release; (5) by redemption under the provision in the Conveyancing Act 1881; and (6) by the Statute of Limitations. (Edwards, 276, 280, 281, 451.)

Q. Mention any peculiarities of the law relating to tithes and tithe rent-charge.

A. Tithes constituted the provision for the ministers of the Church, consisting of a tenth part of the yearly increase of the soil, and under various Acts of Parliament of the present reign, a rent charge varying with the price of corn has now been substituted for tithes in kind. On the sale of land, tithe is a burden, the existence of which is presumed in the absence of agreement, but from the dissolution of the monasteries it has arisen that not only the lands of many laymen (being derived from the Crown) are discharged from tithes, but that an existing right of tithe is vested in lay hands. Under the Tithe Commutation Acts, the person entitled to tithes is enabled by deed, to be approved by the Commissioners and confirmed under their seal, to merge the tithes or tithe rent-charge in the land out of or in respect of which they issue. Tithes in lay hands are capable of sale as a distinct incorporeal hereditament, and on an open con-

tract for the sale of tithes a purchaser is entitled to call for the production of the original grant, and then to have the title deduced for a period of 40 years preceding the sale. They always descend by Common Law rules, and are not subject to any particular customs, *e.g.*, gavelkind. (Goodeve's Realty, 357-360.)

Q. In what cases, and subject to what restrictions, can quit-rents and other perpetual charges be compulsorily redeemed?

A. Where there was, at the end of 1881, a quit rent, chief rent, rent-charge, or other annual sum issuing out of land—which is perpetual and is *not* tithe rent-charge, or a rent reserved on a sale or lease, or a rent payable under a building grant—any person interested in the land may, by signed writing, require the Land Department of the Board of Agriculture to assess under seal the sum for which the rent can be redeemed; and may then give one month's notice in writing to the person who is absolute owner of the rent, or can absolutely dispose thereof, or can give an absolute discharge for its capital value; and may then pay or tender the certified value to such person, and on proof thereof get a certificate from the Department that the land is freed. (Conveyancing Act 1881, sec. 45.)

Q. State the meaning of franchise, lay-impropriator.

A. A *franchise* is a royal privilege subsisting in the hands of a subject, *e.g.*, to have a market, forest, fishery. *Lay-impropriator* denotes the owner of an advowson who has obtained it because it was vested in Henry 8 by statute and was afterwards granted by the Crown to a layman as a lay interest. (Edwards, 15, 283.)

Q. Explain the meaning of the term "free-fishery."

A. A *free-fishery* is the exclusive right of fishing in a public river, and is a franchise granted by the Crown to, or vested by prescription in, a private person and his heirs; the owner has a qualified property in the fish before they are caught; grants of this description can no longer be made by

personal estate, *e.g.*, a horse, £100, a suit of mourning. A specific legacy is a gift of an ear-marked part of testator's personalty, *e.g.*, my brown horse, my railway stock, the plate presented to me by X; and is lost if the testator is not possessed of the thing given at his death. A demonstrative legacy is a gift of a certain sum directed to be satisfied out of a particular fund, *e.g.*, £100 out of my consols; and if the fund is non-existent, or so far as it is insufficient, at testator's death, the legacy is treated as a general legacy.

Q. What are the provisions of the Wills Act (1 *Vict., c.* 26) *with regard to lapses of devises and bequests? A, in* 1830, *made a will, and thereby* (*inter alia*) *left certain land to a charity, and the residue of his real estate to B. He died in* 1845. *Who became entitled to the land? What would be the effect if the will had been made in* 1840, *and the death occurred in* 1850? *and what if the will had been made and death had occurred in* 1892?

A. (1) That a devise of an estate tail shall not lapse if the devisee has heritable issue alive at testator's death; (2) that a devise or bequest to a child (or other lineal descendant) of testator shall not lapse if he leaves issue alive at testator's death, but shall take effect as if he had died immediately after testator; (3) that lapsed or void devises and bequests go to the residuary devisee or legatee. In the first case, the devise to the charity was void by the Mortmain Act then in force, and that land went to the heir as under an intestacy, for in wills prior to 1 Vict., c. 26, lapsed or void devises did not fall into the residue (see sec. 34); in the second case, the charitable devise was void, but under the Wills Act B takes the land; in the third case, the Mortmain Act 1891 says the charity shall take the land but must sell it within twelve months.

Q. A testator seised in fee simple of land, by his will, dated after 1837, *devises it to his son X, who dies in his father's lifetime, leaving a son, Y, living at the testator's death. How will the land devolve on the testator's death?*

A. This being a devise to a child of testator, who leaves issue alive at testator's death, the Wills Act prevents a lapse and says the devise shall take effect as if X had died immediately after the testator. Therefore, if X left a will, the land will pass under such will; but if X died intestate the land will go to his heir-at-law, *i.e.*, the son Y.

Q. Testator devises one freehold farm to each of his nephews, A, B, and C, in tail, and the residue of his real estates to the three nephews as tenants in common in fee. A died in testator's lifetime, leaving sons and daughters living at testator's death. To whom, and in what shares, do the farms and residuary real estate pass at testator's death?

A. A's farm goes to his eldest son as tenant in tail by descent, because of 1 Vict., c. 26, sec. 32; B is tenant in tail of his farm by purchase; so is C. B and C take two undivided third parts of the residue as tenants in common in fee; but A's undivided third part lapses, he not being a child or other issue of the testator. And as A's third is part of the residue, there is an intestacy as to it, and it goes to the testator's heir-at-law.

Q. What change did the Wills Act make in the ordinary interpretation of the words "died without issue" when occurring in a will?

A. Prior to the Act, the words were construed to mean an indefinite failure of issue and so gave an estate tail; but since the Act, they mean a want or failure of issue at the death of the person on whose death without issue the property is to go over, unless a contrary intention appears in the will by reason of such person having a prior estate tail, or of a preceding gift being, without implication by such words, a gift of an estate tail to such person or issue, or otherwise. (1 Vict., c. 26, sec. 29; see also Conveyancing Act 1882, sec. 10, *ante*, page 108.)

Q. Explain the difference between an executor and an

administrator. Under what circumstances are the following forms of letters of administration respectively granted, viz., (a) *during minority;* (b) *during absence;* (c) *with a will annexed;* (d) *of unadministered goods; and* (e) *when, in the first two cases, does the administrator's office cease?*

A. An executor is the person named by the testator in his will to carry out his wishes; all the personalty vests in him immediately the testator dies; and he may do any acts of administration short of going into Court before he takes probate, which is a mere authentication of his title. An administrator is an official appointed by the Court of Probate to wind up the deceased's affairs, where there is no executor, or the executor declines to act, or dies intestate without completely winding up the estate; he has no authority but the letters of administration, and cannot act without them. (*a*) Where a sole executor or the next-of-kin is a minor; (*b*) Where the sole executor is out of the kingdom at the death, or goes to reside abroad after taking a grant and remains there for a year; (*c*) where an executor dies before the testator, or renounces, or there is a will which does not appoint an executor; (*d*) where an executor dies intestate, or an administrator dies, without having fully administered the estate; (*e*) when the minor attains his majority and the absent one returns respectively.

Q. If a creditor appoints his debtor his executor, what is the effect at law, and in equity, respectively?

A. At law, this operated as an extinguishment of the debt, because the executor could not sue himself; but in equity, the executor is bound to account for the debt to the testator's estate.

Q. (a) *A bequeathed his watch to X, and appointed Y his executor. At the death of A the watch was in the hands of a watchmaker, who wrongfully refused to deliver it up. Who is the proper person to take proceedings for its recovery, and why?* (b) *A owed B £500 and C £200. The former debt was payable immediately, but the latter was payable three years hence. A by his will bequeathed £300 to B, and the same sum to C.*

Would either and which of the debts be satisfied by the legacy left to the creditor?

A. (*a*) The executor, for all the personalty vests in him the moment testator dies, and the legatee's title is incomplete until the executor has assented to the legacy. (*b*) The legacy to B will not satisfy his debt even *pro tanto*, but the legacy to C will satisfy his debt. The leaning of the Court is against satisfaction of debts by legacies; consequently there is only a satisfaction where the legacy is equal to or greater than the debt, and in all other respects equally beneficial, and the debt is owing when the will is made, and the will does not direct both debts and legacies to be paid.

Q. State briefly the duties of an executor with respect to the administration of the testator's estate.

A. He must bury the deceased in a manner suitable to his estate; make an inventory of the personal property; prove the will; collect and realize the personalty, bringing actions where necessary for that purpose; pay the debts in proper order; pay the legacies, pass the residuary account, and pay the duty; and pay the residue to the residuary legatee, or if none, to the next-of-kin. If there are no next-of-kin, he is personally entitled to the residue, unless the will evinces a contrary intention.

Q. What acts of administration can an executor do before probate?

A. He may do all ordinary acts of administration short of going into Court—*e.g.*, make inventories, sell and assign personalty, collect debts, pay debts and legacies, commence an action; but if he has occasion to go into Court in the action, he must produce the probate, as that is his only evidence of his title to sue.

Q. In what cases can executors and testamentary trustees respectively sell or mortgage their testator's real estate for payment of his debts or legacies?

A. By 22 & 23 Vict., c. 35, secs. 14-17, if the testator has

charged his real estate with payment of debts or legacies; then (1) if he has devised the same to trustees for his whole interest therein and has not made any express provision for raising such debts or legacies, the trustees may raise the same by sale or mortgage, notwithstanding the trusts actually declared; but (2) if testator has not devised his real estate to trustees for all his interest therein, the executors for the time being may so sell or mortgage. But the Act does not extend to a devise to any one in fee or in tail or for testator's entire interest, charged with debts or legacies, nor does it affect the power of such devisee to sell or mortgage.

Q. Is an executor bound to plead the Statute of Limitations to a demand for the payment of a debt which is statute-barred, or may he pay it if he thinks fit? If the estate is being administered in the Chancery Division, is any and what other person competent to take the objection although the executor may not have insisted upon it?

A. An executor may pay a debt proved to be justly due from his testator, although barred by the Statute of Limitations; but not where it is barred by any other statute (*In re* Rownson, Field v. White, 29 Ch. D., 358). If the estate is being administered in the Chancery Division, the plaintiff, or any person interested in the fund, may plead the Statute of Limitations against a claim set up by a creditor, although the executor refuse to take advantage of such plea. (Shewen v. Vanderhorst, 1 Russ & M., 347; 2 Russ & M., 75; Williams on Executors, 1810, 1811.)

Q. An owner in fee of land died in February, 1879, *having devised the land to his son absolutely, and bequeathed his personal estate to his widow, whom he appointed executrix. Who can recover from the tenant the Lady-day rent, and who is entitled to it when recovered?*

A. The rent accrues due after the testator's death, viz., on 25th March; consequently under the Apportionment Act 1870, the rent is only recoverable from the tenant by the son

as devisee, who may distrain or sue; and the son is personally liable to the executrix in an action for the apportioned part up to the death of the testator.

Q. Testator appointed A and B his executors. In administering his estate it becomes necessary to (a) *sue a tenant of a freehold house for rent in arrear at testator's death;* (b) *sell and convey a leasehold house;* (c) *receive a debt due to testator;* (d) *assent to a legacy to A. State which of these acts can be done either by A or B solely, and which must be done by them jointly.*

A. Both A and B must join in the action; but as any one executor alone can perform all other ordinary acts of administration, either A or B solely, or the two jointly can do any of the other acts specified.

Q. (a) *In the absence of any express direction upon the subject, from what period, and at what rate, do legacies carry interest?* (b) *If a legacy is left by a parent, or person in loco parentis, to an infant, from what period would the legatee be entitled to interest, and why?* (c) *If a legacy is given to an infant, or to a person beyond the seas, in what way can the executor obtain a proper discharge for it?*

A. (*a*) From a year after the death of the testator, at 4 per cent.; but interest runs from the death, if the legacy is to a child, or is charged on land, or is in satisfaction of an interest bearing debt, or is specific. (*b*) From the death unless some other fund is given for maintenance, because the legacy is presumed to be given for maintenance. (*c*) By paying it into Court under the Legacy Duty Act. (36 Geo. 3, c. 52.)

Q. A widower bequeathed his residuary personal estate equally amongst his six named children, of whom A and B subsequently died in his lifetime. A died a widower, and intestate, leaving two children, who survived testator. B died a bachelor, and testate. To whom, and in what shares, does the residuary personal estate belong?

A. The residuary bequest creates a tenancy in common; the four surviving children, therefore, each take one-sixth of

the residue; A's share does not lapse (1 Vict., c. 26, sec. 33), but passes to his two children in equal shares; but B's share does lapse, and is divided amongst testator's next-of-kin—viz., into five parts, one to each of the four surviving children, and the other to the two children of A *per stirpes*.

Q. If freehold land be limited to John and his heirs by Mary his wife, what estate has he (a) *during her life* (b) *after her death without issue; and what power of disposition has he over the land during each of those periods?*

A. If the limitations are by deed, John takes a fee simple estate in possession with absolute powers of disposition; the use of the words "heirs of the body" or "in fee tail" being necessary to create an estate tail. But if the limitation is by a will, then—as any words of procreation in a will are held to indicate an intention to create an estate tail in the absence of avowed intention to the contrary, and the cardinal maxim is that the intention of the testator shall be given effect to as nearly as may be—John takes an estate in special tail, which he can convert into a fee simple absolute at any time during the life of his wife Mary by disentailing deed under 3 & 4 Wm. 4, c. 74, but if he omits to do this before Mary's death without issue, he becomes tenant in tail after possibility of issue extinct, when he cannot bar the entail, and generally has the powers of a tenant for life.

Q. What points require attention in the preparation of a will giving legacies to (a) *a creditor*, (b) *a debtor*, (c) *a child, for whom the testator has covenanted to make provision*, (d) *a charity?*

A. (*a*) To consider whether the creditor is meant to have the legacy in addition to the debt owing to him by the testator (Talbot v. Duke of Shrewsbury, Indermaur's Conveyancing and Equity Cases, 124). (*b*) To consider whether the testator means the debt to be discharged, and the legacy to be in addition to this. (*c*) To consider whether the testator means the legacy to be something beyond the

provision, or in satisfaction thereof (*Ex parte* Pye, *Ib*). (*d*) Formerly it was necessary to take care and make the legacy payable out of pure personalty only, so as not to be rendered bad either wholly or in part, by reason of the provisions of the Mortmain Act 1888; but if the testator dies since the Mortmain Act 1891, this precaution is unnecessary, as by that Act a charity can take land under a will, but must sell it within 12 months.

Q. A testator who died in 1835, *devised Blackacre to A and his heirs, and the residue of his real estate to B and his heirs. A died intestate in the testator's lifetime. At the testator's death Blackacre was claimed by B, by A's heir, and by the testator's heir. Who was entitled to it? Would it have been different if the will had been made in* 1840?

A. Where the testator died in 1835, his heir-at-law was entitled; because the devise to A lapsed, and a residuary devise did not then pass lapsed and void devises as it does now by 1 Vict., c. 26. But if the testator died in 1840, the devise to A lapsed, and under 1 Vict., c. 26 (sec. 24) the residuary devisee B would take, unless A were a child or other issue of testator and left issue living at testator's death, when A's residuary devisee, or heir, would take by sec. 32 of the same Act.

Q. What are the provisions of the Wills Act, 1 *Vict., c.* 26, *with respect to the extent and duration of estates devised to trustees?*

A. Where it is not specified what estate trustees are to take, they do not now as formerly, merely take such an estate as is necessary for the purposes of their trust, but under the 30th and 31st secs. of the Act, they in all cases take either an estate determinable on the life of a person taking a beneficial life interest in the property, or if the trust may endure beyond such life then they take the fee simple. (Goodeve's Realty, 398, 399.)

Q. A testator gave all his property to trustees upon trust for his daughter, subject to a condition that she would forfeit it

in case she married without their consent. This property consisted of real and personal estates, and money charged on land. The daughter married without the consent of the trustees. What was the effect of the marriage upon the property given by the will, and why?

A. As regards the real estate and the money charged on land, the daughter forfeits all her interest; but as regards the personal estate, the condition is regarded as merely *in terrorem* and void unless there is a gift over, and as there is here no gift over, the daughter does not lose the personal estate.

Q. State the steps by which the real property of deceased persons has become liable for payment of their debts. State how creditors can enforce their rights against real estate.

A. In the time of Edward 1, the real estate was liable in the hands of the heir for specialty debts, in which the heir was bound. If deceased devised his lands to trustees to pay debts, equity allowed specialty and simple contract debts to rank equally. 3 Wm. & Mary, c. 14, enabled specialty debts, in which the heir was bound, to be enforced against devisees. In 1807, the lands of dead traders were made liable for simple contract debts. In 1833, by 3 & 4 Wm. 4, c. 104, lands were made liable for simple contract debts, after payment of specialty debts. In 1869, by 32 and 33 Vict., c. 46, simple contract creditors were allowed to rank *pari passu* with specialty creditors. If judgment has been obtained in the debtor's lifetime, by writ of *elegit*; otherwise by administration proceedings in the Chancery Division, or, if the estate is insolvent, in the Bankruptcy Court under sec. 125 of the Bankruptcy Act 1883. (Williams' Real Property, 255-259.)

Q. X, by his will, gave an annuity of £100 *to Y, and, after directing his executors to purchase same, went on to declare that Y should not be allowed to have the value of the said annuity in lieu thereof. Y nevertheless claims to be paid such value. Advise the executors as to the validity of the claim.*

A. Y's claim is perfectly valid, for it is a perpetual annuity and he is entitled to the *corpus*. This right of Y might have been prevented by the testator having given the annuity over to some one else, or directing that it should fall into residue on any alienation or attempt to anticipate. (Hayes & Jarman, 10th ed., 142.)

11.—HUSBAND AND WIFE.—SETTLEMENTS.

Q. Give an outline of a marriage settlement of real property?

A. Date; Parties—(1) intended husband, (2) intended wife, (3) trustees; Testatum; in consideration of intended marriage the settlor conveys the real property to the trustees in fee simple—To use of settlor and his heirs until marriage, and afterwards—To use that the intended wife shall, during the joint lives of herself and her husband, receive a yearly rent charge (payable half yearly, the first payment to be made six calendar months after the marriage) as pin money for her separate use without power to anticipate; and subject thereto—To use of husband for life *sans* waste; with remainder—To use that the wife surviving her husband shall receive a jointure rent charge for life, commencing from the death, and payable half-yearly; and subject thereto—To use of trustees for 1000 years to raise portions for younger children: and subject thereto—To use of first and other sons of the marriage in tail male in succession, according to seniority; with remainder—To use of the daughters as tenants in common in tail, with cross-remainders amongst them; with remainder —To use of settlor in fee simple. There should be clauses (1) fixing amount of portions and giving husband power of appointment with a hotchpot clause; (2) declaring trusts of portion term; (3) advancement clause; (4) power for husband to jointure a future wife, and charge portions for children of future marriage; (5) naming trustees for Settled Land Acts and Conveyancing Act; (6) power for husband (and after his death for trustees) to mortgage for improvements; (7) hus-

band to be the person to appoint new trustees; (8) any special clauses desired; (9) settlement to be void unless marriage takes place within 12 months. (Prideaux, Vol. II.)

Q. Sketch in outline a marriage settlement of £5,000 consols belonging to the wife, upon usual trusts, omitting all clauses and powers sufficiently provided for by statute.

A. Date; Parties—(1) intended husband, (2) intended wife, (3) trustees; Recitals—(1) of intended marriage, (2) of agreement for settlement, (3) of transfer of consols to trustees; Testatum—Declaration that trustees should hold consols (*a*) until marriage, in trust for wife, and (*b*) after marriage, upon the following trusts, *i.e.*, (1) Trusts to retain, or sell and invest, with power to vary investments; (2) Trust to pay income to wife for life, for her separate use without power of anticipation, with remainder to husband for life; (3) Trust in remainder as to *corpus* and income for children as husband and wife, or survivor, appoint, and, in default of appointment, equally—sons at 21, and daughters at 21 or marriage, with a hotchpot clause; (4) Trusts (on default of issue) for wife surviving coverture absolutely, but otherwise as wife by will appoints, and in default of appointment to her next-of-kin under the statutes excluding husband. Then come—Agreement to settle future acquired property on like trusts, if so intended; Investment Clause; Power to appoint new trustees to be vested in husband and wife and survivor; Solicitor trustee to charge costs; Settlement to be void unless marriage within 12 months; Testimonium (Prideaux, Vol. II.) If the settlement were of the husband's property, he would have the first life interest, and the trust (4) on default of issue would simply be for him absolutely.

Q. What is the object of adding a hotchpot clause to powers of appointment among children? Show how such a clause may operate favourably towards the representatives of a child dying before appointment.

A. To prevent a child to whom an appointment has been

made taking any share in the unappointed funds without bringing the appointed share into account. Under such a clause, the representative of such child will share the unappointed fund with the children to whom no appointments have been made; whereas in the absence of the clause, the children to whom appointments have been made will also be entitled to share in the unappointed funds.

Q. How can copyholds, leaseholds, and personal chattels be settled to accompany freeholds in strict settlement?

A. Copyholds should be surrendered to the use of trustees as joint tenants of a customary estate in fee simple upon trusts; and leaseholds and personal chattels should be assigned to the trustees absolutely to be held upon trusts and subject to powers and provisions—corresponding as nearly as law and circumstances permit with those relating to the freeholds. But as regards leaseholds and chattels, there must be a provision that they shall not vest absolutely in a tenant in tail by purchase unless he or she attains 21.

Q. (a) *Can an infant, and if so, at what age, make a valid and binding settlement on marriage, and if so, how?* (b) *A married man conveyed an estate to trustees upon trust for his wife and children, and afterwards agreed to sell the same estate for value to a purchaser with notice of the settlement. Can the purchaser insist upon having the estate, or is the settlement valid as against him?* (c) *A, upon his marriage, settled a part of his own property upon trust for himself until he should dispose of the same, or become bankrupt. He afterwards became bankrupt. Would such a settlement be binding upon his trustee in bankruptcy?*

A. (*a*) An infant not under 20, if a male, or 17, if a female, can make a binding settlement on his or her marriage, with the sanction of the Court of Chancery under 18 & 19 Vict., c. 43; but if such infant is a tenant in tail, and either bars the entail or exercises a power of appointment, he must attain 21 for the settlement to be good. If an infant makes a

settlement without the sanction of the Court he may avoid it on coming of age, but if the infant does not avoid it within a reasonable time after coming of age then he or she will be bound by it (Carter v. Silber, 61 L. J., Ch., 401). (*b*) If the settlement is really a voluntary one, the settlement will be void as against the purchaser under 27 Eliz., c. 4. (*c*) No; such a settlement will not be binding on the trustee. If however, A acquired any property with his wife on the marriage, the settlement will be considered to be made with her property, and be valid up to the value of the property so received. (Prideaux, Vol. II.)

Q. Note the effect of marriage upon the wife's freeholds, leaseholds, choses in action, and choses in possession respectively.

A. *By the common law*—the husband became entitled to receive the rents and profits of the freeholds during the coverture, and, if he survived her, might have an estate by curtesy for his own life; he could deal with the leaseholds in any way except dispose of them by will, and, so far as he did not dispose of them *inter vivos*, they passed to the survivor; the choses in possession vested absolutely in him; and the choses in action vested absolutely in him, provided he reduced them into possession during the coverture, otherwise they passed to the survivor, but, if he survived, he took as administrator. *Equity* permitted property to be given to the separate use of a woman, in which event the husband could only take (1) what the wife chose to give him, and (2) curtesy out of undisposed of freeholds of inheritance, and (3) undisposed of chattels real as her administrator; it also permitted the restraint on anticipation, which prevented her giving him anything beyond the income as it fell due; it also gave the wife her equity (or right) to a settlement out of her choses in action, which the husband could only reduce into possession by the aid of a court of equity; and it set aside a secret conveyance or settlement by a woman pending her marriage as a fraud on marital rights, except in a few

rare instances. *The Legislature*, by 33 and 34 Vict., c. 93, enacted that (1) the wages, earnings, and savings of every married woman should be her separate property; and (2) that all personalty acquired as next-of-kin, and money not exceeding £200 under a deed or will, and the rents and profits of freeholds and copyholds acquired by descent, should be separate property where the marriage was after the 9th August, 1870, and the property was acquired during coverture. Lastly, by 45 & 46 Vict., c. 75, it is enacted (1) that all real and personal property belonging to a woman married after 1882, or coming to her during the marriage, shall be her separate property; and (2) that where a woman was married before 1883, all property, "her title to which, whether vested or contingent, and whether in possession, reversion, or remainder shall accrue" after 1882, shall be separate property. In construing the words in inverted commas, the Court of Appeal held, in Reid v. Reid, 55 L. J., Ch., 294, that where a reversionary interest was acquired before 1883 by a married woman, but it fell into possession after 1882, the Act does not make this separate property, as there can only be one accrual of title.

Q. What power of testamentary disposition of real and personal property respectively had a married woman before 1st January, 1883, and what additional power of testamentary disposition does she possess since that date?

A. Before that date—a married woman could only make a will of real or personal estate settled to her separate use as of right; and a will of personalty, which was not separate property, with her husband's consent, which he might revoke at any time before probate. Since that date, she has also the added powers (1) if married before 1883, of making a will of all property coming to her during the coverture after 1882, and (2) if married after 1882, of willing all her property at the date of, and also acquired during, the coverture. (*In re* Price, Stafford v. Stafford, 28 Ch. D., 709; 54 L. J., Ch., 509.)

possession for 12 years without any signed acknowledgment of the right to redeem; it is alienable; and devolves on intestacy like the land itself, but subject under Locke King's Acts to the mortgage debt. (Edwards, 223-226.)

Q. After sale of the equity of redemption by the mortgagor, can the mortgagee sue the purchaser or the mortgagor for the principal and interest due on the mortgage? Give reasons.

A. The mortgagee can still sue the mortgagor on his covenant. He cannot sue the purchaser of the equity of redemption, for there is no privity between him and such person. But the mortgagor is, in the absence of any contrary intention, entitled to be indemnified by the purchaser of the equity (Waring v. Ward, 7 Ves., 337), the principle being that there is an implied covenant on the part of the purchaser to this effect. (Goodeve's Realty, 207.)

Q. What are the general powers and liabilities of a mortgagee in possession of land?

A. He can make building leases for 99 years and occupation leases for 21 years; he can cut and sell ripe timber; he must account for what he has received, or but for his wilful default might have received; he is chargeable with an occupation rent in respect of property in hand, and is liable for voluntary waste; he is allowed the cost of necessary repairs; he may charge actual expenses. (See Goodeve's Realty, 197, 198.)

Q. (a) *What provisions are implied in a statutory mortgage of land under the Conveyancing Act* 1881, *sec.* 26*: and* (b) *what remedies, under the Act generally, has a statutory mortgagee for enforcing his security?*

A. (*a*) In a statutory mortgage there are implied by sec. 26 of the Conveyancing Act 1881: (1) a covenant with the mortgagee by the mortgagor to pay the stated mortgage money on the stated day with interest at the stated rate, and thereafter, so long as any of the mortgage money remains unpaid, to pay interest on the unpaid portion at the stated

rate by equal half yearly payments commencing at the end of six calendar months from the day stated for payment of the mortgage money; and (2) a proviso for redemption and reconveyance on payment of the mortgage money and interest on the stated day. (*b*) The remedies of a statutory mortgagee—and of every mortgagee, if the mortgage deed was made since 1881—are: (1) Sale when the mortgage money is due, secs. 19 (1) 20, and 21. (2) Insurance, secs. 19 (2) and 23. (3) Appointment and removal of a receiver, secs. 19 (3), 24. (4) Power to give receipts for purchase and other moneys and securities, sec. 22. (5) Recovery of the title-deeds after his power of sale becomes exerciseable, except against persons having prior claims, sec 21 (7). (6) Obtain an order for sale in an action for foreclosure and redemption, sec. 25 (2). (7) When in possession make or agree to make agricultural or occupation leases not exceeding 21 years, and building leases not exceeding 99 years, by sec. 18, unless excluded. (8) When in possession cut and sell timber, sec. 19.

Q. Against what persons respectively is an unregistered bill of sale valid or invalid?

A. The subject of bills of sale is governed by two Acts passed respectively in 1878 and 1882 (41 and 42 Vict., c. 31; and 45 & 46 Vict., c. 43). The 1882 Act applies to all bills of sale given by way of security for money, and the 1878 Act to instruments given other than as security for money, *i.e.*, absolute bills of sale. The effect of non-registration of a bill of sale under the 1878 Act is to render the instrument void (if the chattels are allowed to remain in the apparent possession of the grantor) as against execution creditors and trustees in bankruptcy, but not as between the parties; but under the 1882 Act, a bill of sale is absolutely void if not duly registered.

Q. A proposes to borrow from B £1000 on the security of A's possessory life interest in Consols in Court in an admin-

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